

מדינת ישראל

משרד הממשלה

משרד

אסמג 701-כרם

תיק מס'

מדינת ישראל

ארכיון המדינה



שם תיק: הנרי כתר - אדמה בטול-כרם

פ-175/15

מזהה פיו:

מזהה פריט: 0010hn4

כתובת: 2-112-8-2-3

תאריך הדפסה: 15/03/2017

ארכי

לא רג

מחלקה

22/10/2020

ABDEL RAHIM HAJ IBRAHIM

v.

ABDEL RAHMAN HAJ IBRAHIM

11.37: Plead. Ct orders inspection. Pl. ~~ad~~ appoints Husni Nikdadi. Def appoints Hilmi Bey Hussein. Ct appoints as third expert George Dahlan. Ct will view the land. Pl. to name his witnesses in a list to be filed within one month & served. Adj. to.

11.37: Experts and Court inspect the land in dispute. Adj. for addresses to Ct & Indgt.

11.37: Plead. Judgment: Claim dismissed with costs & P.S. adv. fees.

11.38: Plead. before Ct of App. Indgt: Finding of L.C. as to adverse possession is based on evidence. Appeal dismissed with costs to include P.S. —

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15. 12. 1954

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الحمد لله رب العالمين

الاسماء

المسألة ٥٦٧

ה'תרס"ב

۱۰۰

لشکر اید
لشکر اید
لشکر اید

॥ श्रीगणेशाय नमः ॥

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۱۰۰

1757

IN THE DISTRICT COURT OF NABLUS SITTING AT TULKARM.

BEFORE: His Honour Judge L.E.C. Evans, A/President.
His Honour Mohammad Eff. Baradey, A/Judge.

IN THE CASE OF:

Abdul Rahim Haj Ibrahim, through his
attorney, his son Hassan Mikdadi of
Tulkarm.

PLAINTIFF.

v.

1. Abdul Rahman Haj Ibrahim
2. Shiekh Abdul Latif Haj Ibrahim
of Tulkarm.

DEFENDANT.

Nature of claim: Non interference in Hakura land at Tulkarm.

FOR PLAINTIFF: Hassan Eff. Mihdadi

FOR DEFENDANT: Absent.

States defts. ask adjournment and we do not object.

Plff. admits SHEIKH ABDULLATIF HAJ IBRAHIM - 3rd Brother.

Admits case 207/37 . Tulkarm Magistrate - but case thrown
out for want of jurisdiction.

(Defendant appears to rely on 30 years' possession).

Hassan Eff. having produced P/A General No. 196/22 of
24.8.22- Case adjourned to 3.6.37.

(Sgd) M. Baradey, (Sgd) L.E.C. Evans.

For plaintiff: Omar Eff. Saleh.
Henri Cattan.

For defendant: Auni Abdul Hadi.

Co. for Plf.

Land held in common- Kushan shows and so in Werko
(not produced)-

Claim paying Werko from common moneys to 1929
1929 partition.

Deft. Kushan of 19323 - 30 years old (7) - common between us and Bitar family.

Partition Bittar and selves 1332 - his kushan does not refer to land.

Deft. at 1323 was Ld. Registrar.

Deft. admits poss. in common - in case before Magistrate - verba admission by Auni Bey - filed record of admission - stating formerly in common and now partitioned - Auni stated partition made - he must prove it.

Probable only by documents - or Tabu. We rely on kushan - werko entry - and admission. In 1929 partition made of all ppty. but Hakoura - doct. not produced. Partition sought before Mg.

Deft. P;ots 10 and 11 ppty. both pos - we claim separate ownership 11 - and plfs. have 10 for 30 years. On 10. 3 shops belonging to plf.; short private road between - plots 11 and 10 each has enclosing wall of 30 years - deft. planted plot 11 - for 30 years - fruit - pomgranates - built house - my kushan refers to plot 11 - kushan of plff. is immaterial - I rely on prescription - plf. also in old poss. of his share - lot 10 - 1560 ms. and lot 11 is 1530 ms. ABD LATIF disclaims - plfs. claim 1/3 and in fact have 1/2 of original land -

Pleas - Mejelle 1660 - art. 20 Ld. Code - prescription - defts. need only prove 15 years poss. P.L.R. 86. L.A. 81/25 - prescription runs when Co. ownership not ~~xxx~~ founded on inheritance - L.A. 121/26 P.L.R. 234.

This ppty. is not inherited - plff. have not alleged co-heirs - Urban Tax Assessment - 1929 - shows area assessment and value - plot 10 - and assessment agst. plf. - no protest of not full owner.

Kushan of 1332 is false. I rely on kushan of 1323.

HENRI CATTAN. Do not admit defts. facts. Dispute not on plots 10 and 11 Urban Tax Map - S/C. is clear - refers part of plot 10 and part of plot 11 - plot 10 and plot 11 composed of 2 parts - E lot

plot 10 and plot 11 encompassed separately from W. Hakura Awad - and es
 es Saleh - those two Hakura have separate kushans - W. Half is Hakur
 / Awad now disputed - referred to in 1332 kushan. Boundaries
 correspond kushan E regd. owner -(i.e. Hakura es Saleh) and W.
 road - as on Tax plan.

Kushan 1323 - for house - on new registration for buildings.

Boundaries E road.

S. House ABDUL RAHIM.

W. Main road - which was in existence as private road
 on natural boundary of Hakura Awad and Es Saleh -

S. boundary not ABDUL RAHIM - ^{is}/private road.

Separate registration is possible for house and trees and land.

Kushan and K. Awad 1310 - Hakura is Saleh - owners 3 brothers -

E. Road.

W. Awad.

S. Abd. Kadim Hadjazi.

N. do.

Reg. for 1323 is house only.

Prescription. Cannot be pleaded after admission by Counsel -
 admission defeats prescription - can now only plead partition. Not
 adverse poss. - L.A. 121/26 - p. 234 P.L.R. ad. p. 238 -
 poss. one fig tree.

Court does not regard admission as bar to plea of prescription.

Asks parties to nominate experts to make inspection and determine to
 what plots the several kushans refer.

PLFF. HUSNI MIHDADI. TULKARM.

DEFT. HILMI HUSSEINI - do.

COURT GEORGE DAHLAN. -- . --

Deft. names witnesses.

Sheikh Ismail Kamal. Tulkarm.

Mahmud Haj Kassem. -- . --

Mohed Abdul Halim. -- . --

Haj Nimir Abdel Kadri. -- . --

Sheikh Yusuf Kuba. -- . --

Daoud Abu Sherif. -- . --

(4)

ABDUL KADRI BITTAR.	TULKARM.
BADRAN IHDARI.	--- . ---
HAJ IBRAHIM HAJ HASSAN.	--- . ---
MIKHAUL SABA.	--- . ---
Mr. READING. S.O.	GAZA.
MUDIR EL MAL.	TULKARM.
TAUFIC TAMIMI.	--- . ---

Plf. to submit list of witnesses in one month.

Deft. asks for summonses for Mr. READING, MUDIR EL MAL and SHEIKI ISMAIL.

Plff. to deposit 500 mila for Ct. expert.

Deft. to deposit L.P.2.000 and travelling expenses.

Mr. Reading -

Parties to pay own experts.

Adjd. to 16.9.37.

Inspection 9.30 a.m.

SGD. M. BARADEY.	SGD. L.E.C. EVANS.
	12.6.37.

1.12.37. CDRAM - L.E.C. EVANS.
S. SHEHADEH.

Ct. proceeds to the land in dispute and views the disputed boundary in presence of parties, their experts and counsel.

Resumed in Court for plf. AMIN SALLAH.
H. QATTAN.

deft. - AFIF KHOURY -

Rahmani

Experts put in report on inspection -

Plf. calls :-

Ct. experts sworn.

GEORGE DHLAN - landowner - Tulkarm - I am of Jaffa - came to T'karm N./ to live 1929. I know land in dispute - /ABDEL SALEM BATTAWI - etc.

I have been on land compared boundaries in kushans - both apply to

both plots - Rahmans Kushan is bounded (gives boundaries) on S.

ABDUL RAHIM - is this house or whole land - Can't say if Rahmans

kushan is in respect of whole land - I know nothing of partition.

XX. I know defts. house I know land on road on which stores built and gate to W. Land on which stores built A. RAHMAN has poss.

Jerusalem, 17th February, 1937.

IN THE LAND OF NABLUS

ABDUL RAHIM EFF. HAJ IBRAHIM
of Tulkarem, represented by
Hassan Eff. El-Mikadi

PLAINTIFF

VS.

ABDUL RAHIM EFF. HAJ IBRAHIM
of Tulkarem.

DEFENDANT.

THE CASE :

1. Plaintiff is a joint owner with his brothers of the (Hakura) disputed land situated within the Municipal area of Tulkarem, and which is registered on th names in the Tapou.
2. Plaintiff possession and is ready to present in Court a Tapou Kushan in the name of the three brothers, each possessing one third of the disputed land, and was registered in the names in the fiscal year 1332 (20 years ago).
3. The Tapou kushan registered in the names of the three brothers and dated 1332 (fiscal year), was given to them after the divisions of the land with their partners and was agreed to and with the consent and signature of the Defendant, who signed that the disputed land is in common ownership of the three brothers.
4. The boundaries of this disputed land are:-
NORTH: Abaul Salam Barkawi.
EAST : Land owners.
SOUTH: Asa'd Abdu Ali.
WEST : Public way.
5. The area of the disputed land is 1000 (one thousand) square meters.
6. Both the Plaintiff and the Defendat have a private road passing through the dispute land and leading to their respective houses through which each pass to his own house without the objection of the other.
7. A division of land between them dated July 5th., 1938 and no mention of the disputed land was included, it was left in common ownership between them.
8. Plaintiff and Defendant have been and still are in common possession of the disputed land (Hakura) since it passed to their ownership; the plaintiff himself have planted the trees now existing in the said Hakura.
9. The Defendant is disregarding our legal rights in this land, without any lawful justification and he has attempted to erect shop buildings over all the disputed land, therefore I humbly submit the following:-

(a) That you order the Defendant to stop building work pending the completion of the proceedings, and I offer the guarantee to insure for the Defendant every loss or damage, such order may cause him, if the case does not end in our favour.

In the Magistrate Court of Tulkarm.

BEFORE: His Worship Zaki Bey El-Tamimi.

In the case of :-

Abdul Rahim Eff. Haj Ibrahim through
his attorney: His son Hassan Eff.
Mikdadi, of Tulkarm.

PLAINTIFF.

v.

1. Abdul Rahman Eff. Haj Ibrahim.
2. Shiekh Abdul Latif Eff. Haj Ibrahim,
of Tulkarm.

DEFENDANT.

J U D G M E N T .

The Plaintiff, Abdul Rahim Eff. Haj Ibrahim of Tulkarm, the client of Omar Eff. Sa-Saleh, claimed that he owns and possesses jointly with his brothers: the Defendants - Abdul Rahman Eff. and Abdul Latif Eff Haj Ibrahim the clients of the advocates, Awni Bey Abdul Radie, Abdul Munim Eff. Kashiyyeh and Rashid Eff. El-Jaycusi; the whole land (Hakour) which is known by the name of "Hakouret Awad" which is situated within Tulkarm Sub-District, the boundaries of which, according to the Tabu Entry, are :-

East : Land Owners.
North: The property of Abdul Salam Eff. Barkawi.
West : Public Road.
South: Ass'g Abu Ali.

It is registered in the Land Registry under No.5 May, 1332 in the names of the three brothers, a third for each. Whereas one of the Defendants, Abdul Rahman Eff., had began erecting shops in the said Hakoura without a partition or a lawful justification; he demands to partition the said Hakour and to stop building.

The Plaintiff's Attorney had forwarded during the course of hearing a certificate of Identity (Ilmo Khaber Haweyeh) showing that the claimed Hakour is under the possession of Abdul Rahim Eff. and Abdul Rahman Eff. especially, and a letter was forwarded by the Defendant's Attorney, Awni Bey, from one of the person who signed the said certificate of Identity to the effect that when he signed the certificate he was unconscious and that the said Hakoura was previously partitioned between the brothers: Abdul Rahim Eff. -The Plaintiff, and Abdul Rahman

Eff., - the previous Defendant; and that every one of them possesses his part in corp. Therefore the Court had decided to hear the evidences of the persons who signed the said Certificate of Identity for inquiry. After hearing their evidences, the Mukhtar Mahmoud Shiekh Kasem and El-Afo Yousef El-Khalil, who took oth, it appeared from their evidences that the Hakour the partition of which was claimed is composed of two parts: a Northern part being possessed by Abdul Rahman Eff. the Defendant since 30 years , and a Southern part being possessed by the Plaintiff Abdul Rahim Eff. since years independently. In this circumstance the Mazbata may be considered as a foundation for the partition. As regards the third Defendant, Shiekh Abdul Latif Eff., he stated through his attorney, Abdul Munim Eff., that the claimed Hakoura was previously partitioned to two parts: a Northern and a Southern; The Northern part being in possession of Abdul Rahman Eff. and the Southern in the possession of Abdul Rahim Eff. and that he has nothing of it.

Whereas the Magistrate Courts are not empowered to enter in to discussions in possession and in accordance with Article 2 of the Magistrate's Law, I dismiss this case, ~~xxxx~~ for the lack of jurisdiction, with costs, expences and EP.2 Adv. Fees.

Given and Delivered in presence, subject to appeal on this 20th day of February, 1937.

Sgd. Zaki Tamimi,
Magistrate.

In the Land Court of Nablus.

PLAINTIFF: Abdul Rahim Haj Ibrahim of Tulkarm.

DEFENDANT: Abdul Rahman Haj Ibrahim of Tulkarm.

Statement of Reply.

1. It is not true that the land under dispute is Masha'a between the three of us.

2. It was claimed by the Plaintiff that the land under dispute is jointly owned by the three brothers, and he lodged a case against one of the co-owners, Abdul Rahman, without mentioning the amount of the shares he is claiming and without mentioning the third co-owner, does this mean that the third co-owner is Shiekh Abdul Latif Haj Ibrahim ?

3. A case was lodged by the Plaintiff to the Magistrate Court, Tulkarm (file No.287/37) demanding the partition of the said land, and it was dismissed owing to the failure of the Plaintiff to prove that the said land is Masha'.

4. The Defendant is in possession of the said land independently, the boundaries of which are:-

North: Abdul Salam El-Barkawi.

South: The Plaintiff's, Abdul Rahim Haj Ibrahim, house and private road.

East : Road.

West : Public road.

This land is bounded by a wall of a building since a long period ago, and it was planted with trees by the Defendant and he built a big house in it and he is in possession of the house and the trees. The taxes are paid by the Defendant, and they were paid by him since a long time ago. I attach herewith documents which are connected with it:-

1. Old Werke Entries, for the year 1323(Fiscal).
2. Property tax entries for the year 1929.
3. Property Assessment List, 1929, 1934.
4. An official map including the house and the land entry in a clear way and which was approved by two notables of the village, the Mukhtar, and the Surveyor and Mudir El-Mal.

5. The Plaintiff's case cannot be accepted, because the Defendant was in possession of the said land since a long period, and that can be established by the evidence of Witnesses: Arabs,

British and Government Officers of all classes.

6. The Plaintiff's purpose from the lodging of this case is to encumber the continuation of the building of the six shops which are under building by the Defendant on his land. As regard the guarantee which was submitted by him, it cannot be accepted because the guarantor is the son of the Plaintiff, not a wealthy person and he has no properties of great value. The Mukhtars approval of the guarantee is not accepted because it must be approved by the Chamber of Commerce or to submit a bank guarantee, especially when the value of the building which is under erection is more than £P.3000 and after being bound with contracts and damages with the tenants, half of which were handed over to them and this may lead to loss and the guarantee is insufficient to cover a part of it. The proof that the Plaintiff's purpose from the lodging of this case was to cause my loss, in that he did not lodge it except after the beginning of the erection and building a great part of it as it is seen by the Plaintiff in every day; keeping in mind that the Court's judgments and orders must be complied with and obeyed by every body, and therefore I undertake, at the result of the hearing, to comply with the Honourable Court's decision after the establishment of the Plaintiff's case.

7. The Plaintiff had supported his claim on a partition document which was not submitted until the present time and claims that the Hakoura is the claimed one. This is in our favour, because the non-mentioning it is a strong proof of the Defendant's ownership and possession of the claimed land independently and not with other person.

8. From the foregoing grounds, it is prayed to dismiss the Plaintiff's case, with costs, expenses and Advocate fees. It is also prayed that a copy of this statement and enclosures be served on the Defendant Plaintiff.

7.3.37.

Sgd. Abdul Rahman Haj Ibrahim.
DEPENDANT.

In the Land Court of Nablus
Sitting as a Court of Appeal (SIC)

Before His Honour Judge L.E.C. Evans, A/President
His Honour Judge Salim Bey Shehadeh.

IN THE CASE OF:-

Abdel Rahim El Haj Ibrahim	PLAINTIFF
of Tulkarm.	v
Abdel Rahman El Haj Ibrahim	DEFENDANT
of Tulkarm.	

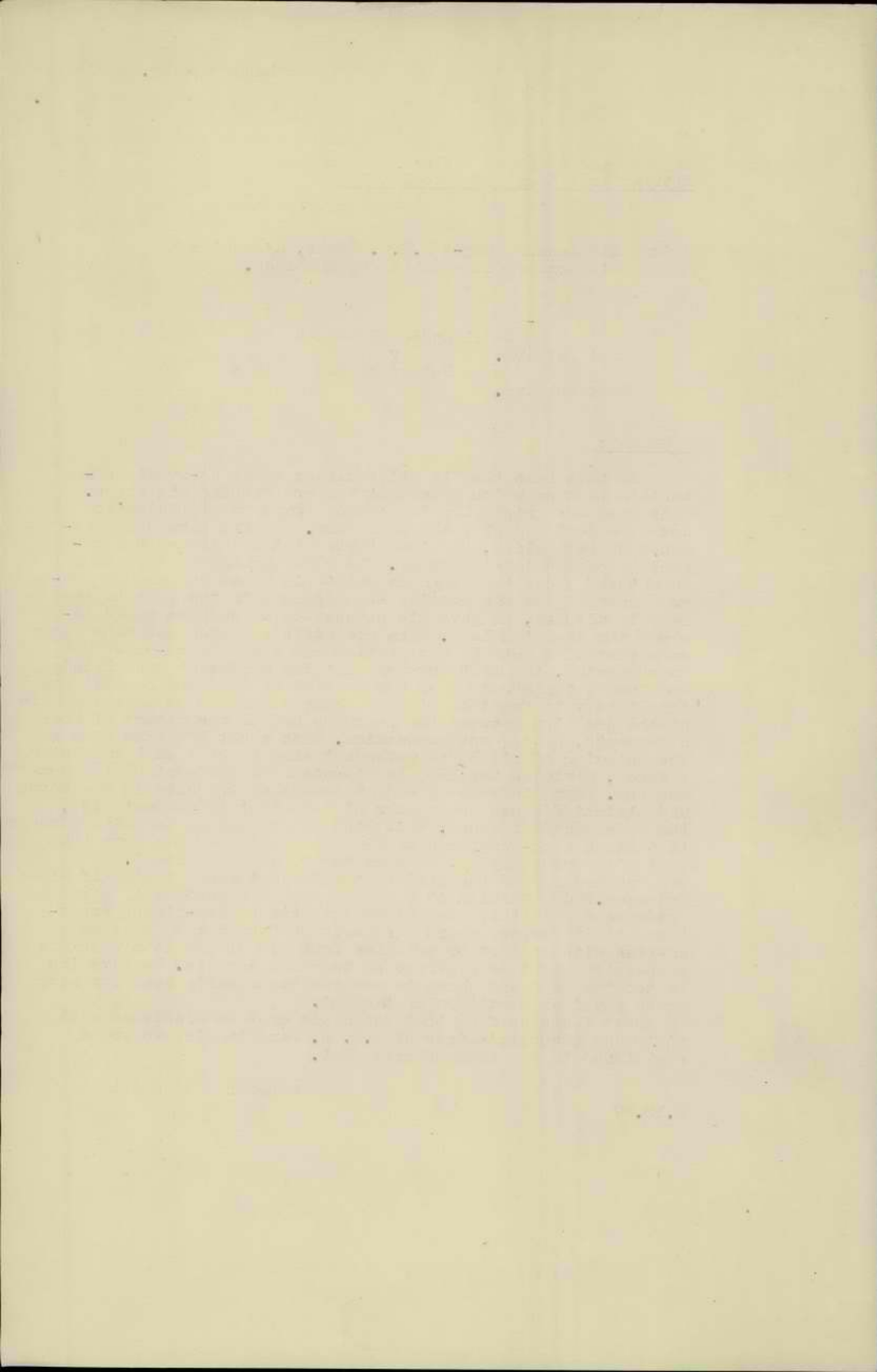
JUDGMENT:

In this case the Plaintiff claims to be co-owner of a certain land on which defendant has now erected six shops. This land was originally the common property of plaintiff and defendant and of a third brother. Kushans have been produced by both sides, but they throw little light on the ownership of the land disputed. The older kushan is that of defendant and shows that when he built his house on land in common ownership of the parties and adjacent to the esat to the land in dispute, he gave his boundaries as such as would include the disputed land. The Plaintiff's kushan was made later on a partition between the parties and a common co-owner now to the south, the fact however that the defendant had already obtained a registration of the portion of the land partitioned immediately in front of his own house seems to us some evidence of the position between the brothers and of the nature of the defendants, subsequent possession. Much about the same time as the building of his house defendant also built a wall and later a fence, dividing the land in dispute from the rest of the commonland. There is some defendant controlled the gate in the fence and plaintiff's own son speaks of defendant to protect his, the defendant's flowers. This kind of possession is quite adverse to that of a co-owner and we find has continued for more than period of prescription, for some twenty years at least. We have considered the fact that defendant has not himself given evidence. Under Turkish it was not usual for parties to give evidence and in this case we do not attach over-riding importance to it for we regard his position behind the wall as adverse without further evidence from him of the date when his possession might be regarded as becoming adverse. We have inspected the land and there is now and has clearly been for many years physical partition of the land. On these facts we find that the claim must be dismissed with costs and advocate's fees of L.P. 5. Land in dispute to be registered in the name of defendant.

Dhehadeh

EVANS

8.12.37



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طولكرم في ٢٤ محرم سنة ٥٦ و ٣٧/٤/٦

سعادة قائم مقام طولكرم المحترم

لي الشرف ان ارجو من سعادتكم التكرم بتحويل استدعائي هذا لدائرة المالية لبيان اسم الدافع للويركو عن قطعة ارض الحاكورة المسجلة في المالية تحت عموم ٩٦٥ وعن مبدأ تاريخ الدفع للويركو عنها وعن كل تفصيل يمكن العثور عليه حول دفع مرتبات الويركو عن القطعة المذكورة ذيلوا واطلبوا احترام سيدي

حسن المقدادي

٢٢

٣٧/٤/٦

عبد الفتاح افندي لاجراء الاجاب
٣٧/٤/٦

٩٦٥

ان ارض الحاكورة تحت عموم هي باسم عبد الرحيم افندي الحاج ابراهيم واخوانه ولم يوجد بدافترنا صراحة $\frac{5}{100}$ لنا تؤيد لنا تاريخ انتقال هذه القطعة للموس الميهم وبالطبع الويركو يحصل مع جملة الاملاك المقيدة بدفاتر الويركو من احد المالكين وهم يتحاسبون مع بعضهم لكون جباة الاموال من القديم لم يبينوا اسم المواقع كل واحد لوحده وتفضلوا فائق الاحترام
مدبر المال
٣٧/٤/٨

HASSAN MIKDADI

JAFFA - TULKAREM (Palestine)

Teleg : HASSAN MIKDADI

Jaffa } Teleph : No.
P. O. B. No. 626

Tul-Karem Tel.: Residence & Office No. 24

حسن المقدادي

يافا - طولكرم (فلسطين)

تلفونياً : حسن المقدادي

تلفون رقم

صندوق البريد رقم ٦٢٦

طولكرم : تلفون المكتب والمزل رقم ٢٤

طولكرم يافا في ١٤ كواليت ٢٠١٧/١٢/١٧ جافا

حضرة الأستاذ الفاضل ر ٢ عمر ارفا الصالح وهنري انفاكسن المحذبه

نحية دامت ما وبعد اتراف باءه ابعت طرف انكم مالي رفته :

١ = صورتان مصدقات مع قرار او حكم محكمة الاخرين له ولاننا

٢ = عداله بر يديه باسم حقة السيد ارفا احدنا وهي المرقمة ب ١٨٧ لا تكتب بر يديه بقية ٦

٣ = وصل ٨٥٠٧١ مع فلم محكمة الاخرين با بلس بقية الرسم الاول المدفوع به قبل للدكتور وهو

بقية مل ٢٥

لذا ارجو من حضرتكم ان تتكروا لي في الحوار رفته خيرا لي باسم دكتور الاستئناف

النبي ارجوكم البادر لا لتقدير انورا بطرفكم وقية احواله المذكور تحت اي باب الزكوة

اجتبااه تبذلوا آخر جهد في سبل الامار حقا في محكمة الاستئناف وكما له الله

بكونكم وهو الوفاق وتعالوا القبول المرحمة ام

المقدادي

ارجوكم تلمحني له استواسي هذه السلة وما تحمد ربه لقد عيكم الدليل

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MASSACHUSETTS

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NOTARY PUBLIC

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STATE OF MASSACHUSETTS

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COUNTY OF

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CITY OF

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بيع الى هذه اففاكة

٢٥٢
محكمة اراضه نابلس
١٧١ / ٧ / ٢٧

سرة القف
٢٧ / ٧ / ٢٧ اراضه

الى حضرات الاراضه : على يد الحسين قاسم عام طوكم بصفه متب غير امين المدعي
وهم اخذ المداوي من طوكم بصفه فتي خيرا من كل المدعي
وغيره من اخذ دوايره من طوكم بصفه متب غير امين المدعي .

بأشار رؤساء المحاكم في قف الاراضه رقم ١٧ / ٧ / ٢٧ الملونه ضابسه المحاميه عمر
اخذ العالم وقدره اخذ كنه بالقبض بصفها ولديه عبد المدي عبد الرحمن اخذ الحاج ابراهيم
اسعد من طوكم وفيه الماني ثوبان يد عبد المدي بالقبض وكن المدعي عبد الرحمن
اخذ الحاج ابراهيم رئيس بلدي طوكم . قررت قضيه هذه المحكمه لردم اجراء الكف
من قبل مع وقع الدرمه المتابع على بنها المساء بمالوره عواد الالهة
ضمه فقه بلدي طوكم . المدوره شد عبد المدي البرقاوي وشرقا ارضه
الحاليه وضمها اسعد ابو علي وعربا طوكم محمد . التي طلب المدعي الحكم له
بملكه تلك هذه الدرمه . بمفهوم بصفه فتي خيرا من كل الطرمه
بالصوره المين اعلاه .

وقد قضت هذه المحكمه ببيع الحين ١٦ / ٩ / ٢٧ الى السيد الوفاء
بحد الفدر حوما لكف مع هذه الدرمه . وضمه لبيبة المحكمه . ووجه
اخذ نصف خيرة اجه محضه باسه في هذه المحكمه لوريم .
لذلك ارجو انه يكونوا حاضرين في هذه مع طوكم بالوقت الحين
لغير زمام عند هذه هذه المحكمه لوريم . لموقع الدرمه بوجها
هذا الكف بمفهوم المحكمه بلدي التي تطلبه من المحكمه اذ
زال . وتقبلوا بصفه فتي خيرا من كل الاراضه

رئيس محكمة قف نابلس
صفه

لنعم لوكيل المدعي
لولا المدعي
للكف
للمدعي

Handwritten text in Arabic script, likely a letter or document. The text is written in a cursive style and is somewhat faded. It appears to be a formal or semi-formal communication, possibly a letter of introduction or a report. The text is arranged in several lines, with some words being more prominent than others. The overall tone is serious and professional.

Handwritten text in Arabic script, continuing the document. This section also contains several lines of cursive text, which is somewhat faded. The text appears to be a continuation of the previous section, possibly providing more details or a conclusion. The overall tone remains serious and professional.

Handwritten text in Arabic script, likely the final part of the document. The text is written in a cursive style and is somewhat faded. It appears to be a formal or semi-formal communication, possibly a letter of introduction or a report. The text is arranged in several lines, with some words being more prominent than others. The overall tone is serious and professional.

28th Dec. 1937.

In the Supreme Court,
Sitting as a Court of Appeal,
Jerusalem.

IN THE APPEAL OF :-

Abdul Raheem Hajj Ibrahim of Tulkarm,
represented by Henry Cattar and Omar
Saleh El-Barguthy, Advocates of Jeru-
salem.

APPELLANT.

AND

Abdul Rahman Eff. Hajj of Tulkarm.

RESPONDENT.

Nablus Land Case No.3/37.

NOTICE AND GROUNDS OF APPEAL .

On the 8.12.37 the Land Court of Nablus, sitting at Tulkarm gave Judgment dismissing Appellant's action against Respondent in Land Case No.3/37 and ordered the land in dispute to be registered in the name of Respondent.

Appeal is hereby filed against the said judgment on the grounds following:-

1) The lower Court was wrong in disregarding the Kushan produced by Appellant, and in saying that the Kushans "throw little light on the ownership of the land disputed." The Court cannot disregard title-deeds showing the ownership of the land, as it is clear from Plaintiff's Kushan that the land is still common.

2) The Court erred in considering that "the older Kushan is that of defendant" and it is probable that there was a misapprehension on the part of the lower Court as the Kushans being made out in the Turkish language were not translated to the Court. It is clear that the older and later registrations of the land show that the land in dispute is common.

1. The first part of the paper is devoted to a general

discussion of the problem and the methods used.

2. The second part is devoted to a detailed

analysis of the results obtained.

3. The third part is devoted to a comparison

of the results with the theoretical predictions.

4. The fourth part is devoted to a discussion

of the experimental errors and the conclusions.

5. The fifth part is devoted to a summary

of the results and the conclusions.

6. The sixth part is devoted to a discussion

of the experimental errors and the conclusions.

7. The seventh part is devoted to a summary

of the results and the conclusions.

8. The eighth part is devoted to a discussion

of the experimental errors and the conclusions.

9. The ninth part is devoted to a summary

of the results and the conclusions.

10. The tenth part is devoted to a discussion

of the experimental errors and the conclusions.

3) The lower Court also erred in attaching any value to the Kushan produced by Respondent, as this Kushan expressly relates to the house, not to the land. Again, this must have been the result of a mistake attributable to the failure to translate the Kushans.

4) There was no evidence, on which the land Court could base its inference of adverse possession, and more particularly there was not such evidence as would defeat a registered title.

5) There was no evidence to warrant the Land Court's findings of fact whether as to the building of a wall or fence, or as to partition.

6) The Court below was wrong in overlooking defendant's admission that the land was common.

7) The Court did not sufficiently take into account the fact that the two parties are brothers in its findings as to possession.

8) In any event the Court was wrong in ordering registration of the land in dispute in the name of Respondent.

Wherefore it is prayed that after service of this appeal on Respondent and hearing the parties in open Court that the Judgment of the lower Court be set aside and Judgment entered in favour of Respondent or such other relief be granted as to the Court may seem just with cost and Advocates' fees.

NC

ATTORNEY OF APPELLANT

Documents Annexed:-

- #
1. Two certified copies of the Judgment of the Land Court.
 2. A copy of the Appeal for service.
 3. Two applications for assessment of deposit in lieu of guarantee.

See ruling of Ct. page
6 of record: under
on him
+ Ruling on 6.9:
See judgment of Ct. below
C.A. 121/26, PL R 238
findings as to adverse possession
not based on
evidence =
inferences =
PA 54/30, Cavanagh
6.65
Goodby 6.203:

29th Dec. 1937.

In the Supreme Court,
Sitting as a Court of Appeal,
Jerusalem.

IN THE APPEAL OF :-

Abdul-Raheem Hajj Ibrahim
of Tulkarm.

APPELLANT.

AND

Abdul-Rahman Hajj of
Tulkarm.

RESPONDENT.

NABLUS LAND CASE No. 3/37.

To the Supreme Court Sitting as a Court of Appeal
Jerusalem.

The abovenamed Appellant has preferred an appeal
numbered of 1937 from the judgment of the Land Court
of Nablus in land action No. 3/37 against the Respondent. It
is hereby prayed that the Court may assess the amount to be
paid by Appellant as security in Court for costs of this
Appeal and any damage or loss caused by the appeal for which
the Respondent may be legally entitled to claim in case the
appeal fails.

Murad Bayan

ATTORNEY OF APPELLANT

Jerusalem 14th February, 1937. القدس

IN THE LAND COURT OF NABLUS.

ABDUL RAHEEM EFF. HAJ IBRAHIM
of Tulkarem, represented by
Hassan Eff. El-Mikdadi

PLAINTIFF.

vs.

ABDUL RAHMAN EFF. HAJ IBRAHIM
of Tulkarem.

DEFENDANT.

THE CASE :

1.- Plaintiff is a joint owner with his brothers of the (Hakura) disputed land situated within the Municipal area of Tulkarem, and which is registered on their names in the Tapou.

2.- Plaintiff possesses and is ready to present in Court, a Tapou Kushan in the name of the three brothers, each possessing one third of the disputed land, and was registered in their names in the fiscal year 1332 (20 years ago).

3.- The Tapou Kushan registered in the names of the three brothers and dated 1332 (fiscal year), was given to them after the division of the land with their partner the Bitar family and was agreed to and with the consent and signature of the Defendant, who signed that the disputed land is in common ownership of the three brothers.

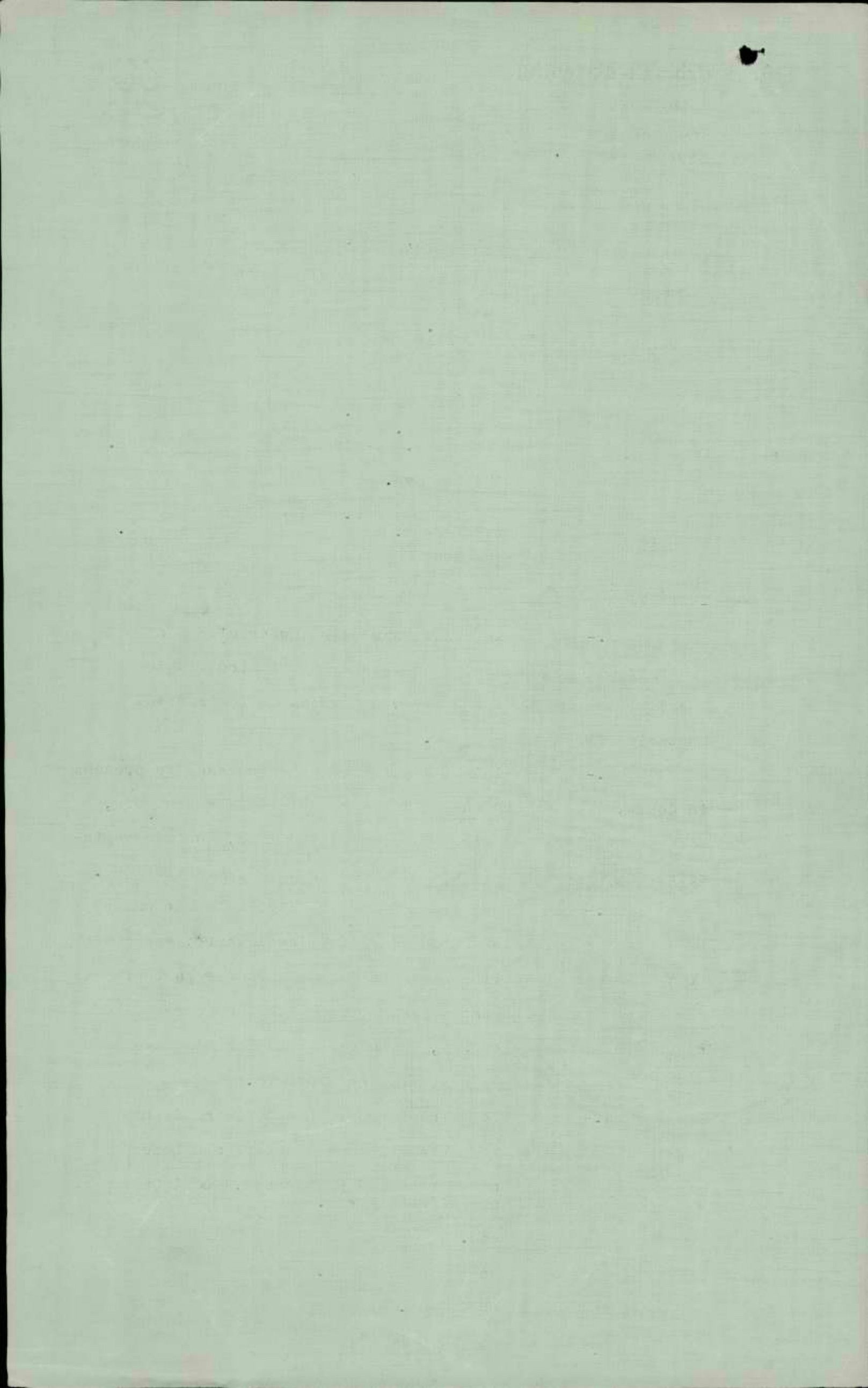
4.- The boundaries of this disputed land together with the two houses of the Plaintiff and Defendant are : NORTH: Haj Nimr Hammad previously, Abdul Salam Barkawi at present.

EAST : Road.

SOUTH: The house of Bitar.

WEST : Public Way.

5.-



Jerusalem القدس

- 2 -

5.- Both Plaintiff and Defendant have built two houses in the East part of the disputed land and left the West part in common ownership between them, its boundaries are :

NORTH: Abdul Salam Barkawi
EAST : Private road to the houses of both Plaintiff and Defendant.
SOUTH: Bitar house.
WEST : Public Way.

So it appears that the boundaries with the exception of the East boundary are the same.

6.- The area of the disputed land is 1500 (one thousand five hundred) square meters.

7.- Both the Plaintiff and the Defendant have a private road passing through the disputed land and leading to their respective houses through which each passes to his own house without the objection of the other.

8.- A division of land between the Plaintiff and Defendant was made, and an agreement^{was registered} between them dated July 5th 1928, and no mention of the disputed land was included a fact which proves that this disputed land was left in common ownership between them.

9.- Plaintiff and Defendant have been and still are in common possession of the disputed land (Hakura) since it passed to their ownership; the Plaintiff himself have planted the trees now existing in the said Hakura.

①. Saleh El-Barguthy

ADVOCATE

Telephone : 577

P. O. Box : 429

المحامى
عمر القيسرى

رقم الهاتف : ٥٧٧
صندوق البريد : ٤٢٩

Jerusalem القدس

- 3 -

10.- The Defendant is disregarding our legal right in this land, without any lawful justification and he has attempted to erect buildings over all the disputed land, therefore I humbly submit the following:

(a) That you order the Defendant to stop building work pending the completion of the proceedings, and I am ready to offer the necessary guarantee ordered by your Honourable Court, to insure for the Defendant every loss or damage, such order may cause him, if the case does not end in our favour.

(b) That you give Your judgment of my ownership of one third of the area of this disputed land.

(c) That Defendant should pay all costs expenses and Advocate's fees.

ATTORNEY FOR PLAINTIFF.

In the Land Court of Malaya,
sitting as a Court of Appeal.

BEFORE: His Honour Judge T.E.C. Evans, A/President.
His Honour Judge Salim Bey Shehadeh.

In the case of :-

Abdel Rahim el-Haj Ibrahim,

of Tulkarm.

v.

Abdel Rahman el-Haj Ibrahim

of Tulkarm.

DEFENDANT.

PLAINTIFF.

J U D G M E N T .

In this case the Plaintiff claims to be co-owner of

certain land on which Defendant has now erected six shops.

This land was originally the common property of Plaintiff and

Defendant and of a third brother. Kushens have been produced

by both sides, but they throw little light on the ownership of

the land disputed. The "older" Kushen is that of Defendant and

shows that when he built his house on land in common ownership

of the parties, and adjacent to the East to the land in dispute,

he gave his boundaries as such as would include the disputed

land. The Plaintiff's Kushen was made later on a partition be

tween the parties and common co-owner now to the South. The

fact however that the Defendant had already obtained a registered

action of the portion of the land partitioned immediately in

front of his own house, seems to us some evidence of the

position ~~between~~ the brothers and of the nature of Defendants,

subsequent possession. Much about the same time as the

building of his house, Defendant also built a wall and later

a fence dividing the land in dispute from the rest of the

common land. There is some evidence that Defendant controlled

the gate in the fence and Plaintiff's own son speaks of

Defendant making the fence to protect his, the Defendant's,

flowers. This kind of possession is quite adverse to that of

a co-owner and we find has continued for more than the period

Not adverse

Mr. Kushen's
for house
now improved

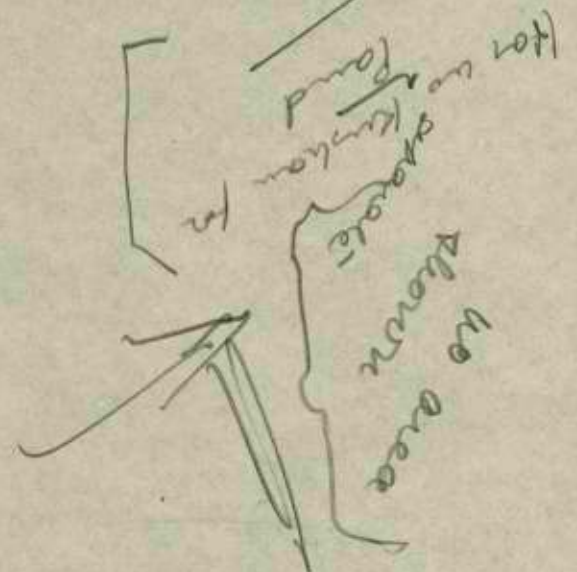
Kushen of Kushen

For a & different
application showing
frequency counter.

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application showing
frequency counter.

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application showing
frequency counter.

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application showing
frequency counter.

- (b) That you give your judgment of my ownership of one of the area of this disputed land.
- (c) That Defendant should pay all costs, expenses and Advocate's fees.

ATTORNEY FOR PLAINTIFF.

OMAR SALEH.

Extract of Tabu Registration,
issued from Tulkarm.

NO.	Date.	Youklama or Da'mi.	Village or Town.	Situation.	Description.	Category.	Area. Dunum.	Share.	Boundaries.	Nature of Possession and issue of Sand.
5	May, 332.	Da'mi.	Tulkarm.	Hakurt Aw- ad.	Planted land.	Miri.	one Dunum.	Complete.	E. Property Owners. N. Abdul Salam Walki. W. Public Road. S. Assad Abu- Alamish 'a'd partitioned Hakourah.	Written in Turkish.
6	do	do	do	do	Planted with different trees.	do	do	do	do	do
Present owner and possessor.		No. of Property in Werkol		Value in Werko.						
Sons of Haj Ibrahim Eff. Eswail, Abdul Rahim, Abdul Rahman and Abdul Latif.		965.		413.						
do		do		833.						

This above is a true copy of the Tegister and is given against payment of 100mils, as per receipt No.384830.

Date. 16.2.37.

Sgd. Registrar of Land.

District: Tulkarm.

17th Feb. 1938.

Chief Registrar,
Supreme Court,
Jerusalem.

IN THE MATTER OF :-

Abdul Rahim Haj Ibrahim

APPELLANT

v.

Abdul-Rahman Haj Ibrahim

RESPONDENT

CIVIL APPEAL 251/37.

As the above appeal has been decided in favour of Respondent, application is hereby made for the refund of the deposit of LP.15.- paid by Appellant after deduction of the costs and Advocate's fees awarded to Respondent by the Court of Appeal.

nl.
ATTORNEY OF APPELLANT

In the Supreme Court,
Sitting as a Court of Appeal,
Jerusalem.

IN THE APPEAL OF :-

Abdul Raheem Hajj Ibrahim of Tulkarm,
represented By Henry Cattar, Barrister
~~at Law, Jerusalem~~ and Omar Saleh El-
Barguthy, Advocates of Jerusalem. APPELLANT

AND

Abdul Rahman Hajj Ibrahim of
Tulkarm. RESPONDENT

Nablu's Land Case No 3/37

STATEMENT OF APPEAL

Notice and Grounds of Appeal.

FACTS.

On the 8.12.37 the Land Court of Nablus ~~sitting at Tulkarm~~
~~gave Judgment in favour of Respondent (Defendant) in the matter of a~~
~~and ordered the land in dispute to be registered in the name~~
~~land in dispute between brothers and Co-owners on the ground of~~
~~of Respondent.~~
~~prescription and partition.~~
dismissal of Appellant's action in land Case No 3/37
against Respondent

The facts so far as material are as follows:-

1) Appellant is the brother of Respondent and a co-owner there-
with in the land indispute. The said land was registered in their name
and that of a third brother in the year 1332 (F). Both Appellant and
Respondent built a house of his own on the eastern part of the disputed
land and left the eastern part vacant to be kept in common ownership
viz. the land in dispute.

2) Appellant and Respondent were agreed on the partition of their
lands held in common ownership and registered same in the Land Registry
on the 5.7.28. The Land in dispute was excluded from the partition.
This is clear from the fact that no mention whatever of the said land was
included in the registration.

3) Respondent (Defendant) trespassed over the said land by
attempting to build thereupon. Furthermore denied Appellant's right
in the said Land.

4) The Land Court of Nablus notwithstanding the fact that there
is no prescription between co-owners ruled against Appellant and gave
Judgment in favour of Respondent.

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GROUND OF APPEAL

Appeal from the said Judgment is hereby filed on the following grounds *following* :

(a) There was ample evidence before the Lower Court that the Appellant is a co-owner of the land in dispute as evidenced by the Kushan, submitted in Court.

(b) The Lower Court was wrong in deciding that time runs against a co-owner. Furthermore there was no evidence before the Land Court justifying a decision as to adverse possession.

(c) Alternatively Respondent admitted that the land in dispute is held in co-ownership, such admission defeats prescription.

(d) The partition relied upon by the Lower Court clearly excludes the land in dispute. Alternatively it cannot be said that such "physical partition" as relied upon by the Court could exist in the Law of Palestine after the ^{enactment of the} Land Transfer Ordinance.

Wherefore it is prayed that after service of ~~the~~ appeal on Respondent ^{and hearing the parties in open Court} that the Judgment of the Lower Court be ^{set aside} ~~quashed~~ and Judgment ^{entered} ~~given~~ in favour of Respondent ^{or such other relief be granted as the} ~~as to his right in the land in dispute~~ Court may deem just with cost and Advocates' fees.

Documents Annexed:-

- 1) ~~Two~~ Certified copies of the judgment of the Land Court
- 2) A copy of the Appeal for service
- 3) ~~Two applications for assessment of deposit in lieu of guarantee~~ ^{Two applications for assessment of deposit in lieu of guarantee}
- 4) ~~A bond (duly authenticated)~~ ^{A copy of the bond for service upon the respondent}

ATTORNEY OF APPELLANT

(5)

(5) since I came to T(karm or knew town.

Rex.

I never saw RAHMAN ~~plucking~~ plucking fruit, etc.
on this land - it was in his control - in front of his
house - never saw either party using it.

CD. for plf.

Kushan put in by plf. shows 3 ----- owners - and
our kushan later than defts. - defts. kushan refers to
house only - no kushan of plffs. house - but our kushan of
w. land is issued on application of all parties.

Co. for defts.

Onus on plf. he must prove partnership

of prescription for some twenty years at least. We/^{have} considered the fact that Defendant has not himself given evidence. Under Turkish Law it was not usual for parties to give evidence and in this case we do not attach overriding importance to it, for we regard his possession behind a wall as adverse without further evidence from him of the date when his possession might be regarded as becoming adverse. We have inspected the land and there is now and has clearly been for many years a clear physical partition of the land. On these facts we find that the claim must be dismissed with costs and Advocate fees £. 5.- Land in dispute to be registered in name of Defendant.

separate
plot
Not experts

Sgd. S. Shehadeh.

Sgd. L.E.C. Evans.
8.12.37.

Amir Bey

11/6/37

Hakomet Saleh
Hakomet Awa

not admitted
No 11 surded
Dispute is re 10/11. -
we claim 11. -
Pl. owns 10.
No 11 surrounded by stone wall.

[built a house in No 11.]

Koushan
No subsequent entry. -

No 10 is 1530 ^{ms} more than 1/2 the land.
Our plot is 1530.

Admission of Partition
I ~~plead~~ plead prescription. -

LA. 121/26, p.R 234
prescription runs if co-ownership does
does not arise from succession. -

30 years prescription

p. 238
admission
must be
adverse
& must
imply a
renunciation of title.

= last works receipt: is for house
situate in No 10. -

His Koushan ^{for 1923} is for house only

If does not accept admission as preventing
admission prescription. -

partition
between Koushan
& Vantia in
332 - after
his Koushan

2080 5th.

Sears (Bancroft).

Thurs.

Para 23: admission in previous proceedings as to partition -
This allegation was not proved.

They are brothers; relatives -
circumstance to be taken into ac
in determining whether there is adverse
possession. -

Pl's Kushan shows property joint
Pl's Kushan is also Def's Kushan: he is registered as
owner; not cancelled.
Def's Kushan for the house is for house only:
(a) description of property
(b) registration of new building.

No evidence of possession
Ct's remarks.

Even if possession proved, there is no
adverse possession:
P.L.R. 238.

Partition between parties on 332: Later than Def's Kushan;
admission of 3 partners in hand Registry & to
Bikaner Idara. -

did not give evidence -

Ajib Ali

we don't admit any partition
our Kushan says Western Boundary: main road.
Issued by Abdul Rahman Awar who was Law Registrar.
we claim exclusive & adverse possession. -
Pl's witness said that the door was shut.

Please prepare appeal

See in support P.A. 54/36. -

Goadby & Dabhan p. 203.

— 27/47. A? coffee in 201
— 200. y. 201. 202.

IN THE DISTRICT COURT OF NABLUS SITTING AT TULKARM.

BEFORE: His Honour Judge L.E.C. Evans, A/President.
His Honour Mohammad Eff. Baradei, A/Judge.

IN THE CASE OF:

Abdul Rahim Haj Ibrahim, through his
attorney, his son Hassan Mikdadi of
Tulkarm.

PLAINTIFF.

v.

1. Abdul Rahman Haj Ibrahim
2. Shiekh Abdul Latif Haj Ibrahim
of Tulkarm.

DEFENDANT.

Nature of claim: Non interference in Hakura land at Tulkarm.

FOR PLAINTIFF: Hassan Eff. Mikdadi

FOR DEFENDANT: Absent.

States defts. ask adjournment and we do not object.

Plff. admits SHEIKH ABDULLATIF HAJ IBRAHIM - 3rd Brother.

Admits case 207/37 . Tulkarm Magistrate - but case thrown
out for want of jurisdiction.

(Defendant appears to rely on 30 years' possession).

Hassan Eff. having produced P/A General No.196/22 of
24.8.22- Case adjourned to 3.6.37.

(Sgd)M. Baradei, (Sgd) L.E.C. Evans.

For plaintiff: Omar Eff. Saleh.
Henri Cattani.

For defendant: Auni Abdul Hadi.

Co. for Plf.

Land held in common- Kushan shows and so in Werko
(not produced)-

Claim paying Werko from common moneys to 1929
1929 partition.

Deft. Kushan of 19323 - 30 years old (?) - common between us and Bitar family.

Partition Bittar and selves 1332 - his kushan does not refer to land.

Deft. at 1323 was Ld. Registrar.

Deft. admits poss. in common - in case before Magistrate - verbal admission by Auni Bey - filed record of admission - stating formerly in common and now partitioned - Auni stated partition made - he must prove it.

*Written evidence
of partition* // Probable only by documents - or Tabu. We rely on kushan - werke entry - and admission. In 1929 partition made of all ppty. but Hakoura - doct. not produced. Partition sought before Mg.

Deft. Plots 10 and 11 ppty. both pos - we claim separate ownership 11 - and plfs. have 10 for 30 years. On 10. 3 shops belonging to plf.; short private road between - plots 11 and 10 each has enclosing wall of 30 years - deft. planted plot 11 - for 30 years - fruit - pomgranates - built house - my kushan refers to plot 11 - kushan of plff. is immaterial - I rely on prescription - plf. also in old poss. of his share - lot 10 - 1560 ms. and lot 11 is 1530 ms. ABD LATIF disclaims - plfs. claim 1/3 and in fact have 1/2 of original land -

*P.L.R. 86
234* Pleas - Mejele 1660 - art. 20 Ld. Code - prescription - defts. need only prove 15 years poss. P.L.R. 86. L.A. 81/25 - prescription runs when Co. ownership not ~~xxxxx~~ founded on inheritance - L.A. 121/26 P.L.R. 234.

This ppty. is not inherited - plff. have not alleged co-heirs - Urban Tax Assessment - 1929 - shows area assessment and value - plot 10 - and assessment agst. plf. - no protest of not full owner. Kushan of 1332 is false. I rely on kushan of 1323.

HENRI CATTAN. Do not admit defts. facts. Dispute not on plots 10 and 11 Urban Tax Map - 3/C. is clear - refers part of plot 10 and part of plot 11 - plot 10 and plot 11 composed of 2 parts - E lot

(3)

plot 10 and plot 11 compassed separately from W. Hakura Awad - and
es Saleh - those two Hakura have separate kushans - W. Half is Ha
/ Awad now disputed - referred to in 1332 kushan. Boundaries
correspond kushan E regd. owner -(i.e. Hakura es Saleh) and W.
road - as on Tax plan.

Kushan 1323 - for house - on new registration for buildings.
Boundaries E road.

S. House ABDUL RAHIM.

W. Main road - which was in existence as private road
on natural boundary of Hakura Awad and Es Saleh -
S. boundary not ABDUL RAHIM - ^{&/}private road.

Separate registration is possible for house and trees and land.
Kushan and K. Awad 1310 - Hakura is Saleh - owners 3 brothers -

E. Road.

W. Awad.

S. Abd. Kadim Hadjazi.

N. do.

Reg. for 1323 is house only.

Prescription. Cannot be pleaded after admission by Counsel -
admission defeats prescription - can now only plead partition. Not
~~admission~~ adverse poss. - L.A. 121/25 - p. 234 P.L.R. ad. p. 238 -
poss. one fig tree.

Court does not regard admission as bar to plea of prescription.

Asks parties to nominate experts to make inspection and determine to
what plots the several kushans refer.

PLFF. HUSNI MIHDADI. TULKARM.

DEFT. HILMI HUSSEINI - do.

COURT GEORGE DAHLAN. -- . --

Deft. names witnesses.

Sheikh Ismail Kamal. Tulkarm.

Mahmud Haj Kassem. -- . --

Mohed Abdul Halim. -- . --

Haj Nimir Abdel Kadri. -- . --

Sheikh Yusuf Kuba. -- . --

Daoud Abu Sherif. -- . --

P.L.R. 234
238

ABDUL KADRI BITTAR.	TULKARM.
BADRAN IEDARI.	-- . --
Haj IBRAHIM Haj HASSAN.	-- . --
MIKHAEL SABA.	-- . --
Mr. READING. S.O.	GAZA.
MUDIR EL MAL.	TULKARM.
TAUFIC TAMIMI.	-- . --

Plf. to submit list of witnesses in one month.

Deft. asks for summonses for Mr. READING, MUDIR EL MAL and SHEIKH ISMAIL.

Plff. to deposit 500 mils for Ct. expert.

Deft. to deposit L.P.2.000 and travelling expenses/

Mr. Reading -

Parties to pay own experts.

Adjd. to 16.9.37.

Inspection 9.30 a.m.

SGD. M. BARADEY.	SGD. L.E.C. EVANS.
	12.6.37.

1.12.37. CORAM - L.E.C. EVANS.
S. SHEHADEH.

Ct. proceeds to the land in dispute and views the disputed boundary in presence of parties, their experts and counsel.

Resumed in Court for plf. AMIN SALLAH.
H. CATTAN.

deft. - AFIF KHOURY -

Chamling R.

Experts put in report on inspection -

Plf. calls :-

Ct. experts sworn.

GEORGE DHLAN - landowner - Tulkarm - I am of Jaffa - came to T'karm N./ to live 1929. I know land in dispute -/ABDEL SALEM BATTAWI - etc.

I have been on land compared boundaries in kushans - both apply to both plots - Rahmans Kushan is bounded (gives boundaries) on S.

ABDUL RAHIM - is this house or whole land - Can't say if Rahmans kushan is in respect of whole land - I know nothing of partition.

XX. I know defts. house I know land on road on which stores built and gate to W. Land on which stores built A. RAHMAN has poss.

Deft. to begin on issue as to prescription and separate possession.

Deft. calls. Sworn:
Mahmoud Haj Kassem - Fellah - Tulkarm.

I know land in dispute - it was in possession of Deft. - for 30 years - in exclusive possession - I am 55 years of age and lived all life in Tulkarm - there were fig trees on site of new shops - Rahman planted garden - I never worked on land I grafted olive trees for Rahman on lower land (Plf. objects to leading question).

XX.: I don't know who planted fruit trees on land - naturally Rahman Eff. planted → I saw no trees planted - I saw him plant some and some planted before - He was standing over labourers - don't know labourers - about 25-28 years ago - I saw defendants children playing there - but not plfs. children - I saw latter there when grown up - I am not neighbour - my house at S.W. of town - I am municipal Co. and good friend of deft. - I grafted 10-12 years ago - 4-5 trees - (does not answer how many trees in all) - I am farmer and have trees and graft for others as favour - not as wages.

Rex.: None.

2nd Deft. Witness, Sworn:

Sheikh Yusef Kubaj - Merchant - Tulkarm.

I know land in dispute - deft. in possession - for 28 years or more - I used to go to him - I used to sit with him in garden - never saw plf. in garden - trees planted in garden - Deft. had control of garden - I am 56 years old.

XX.: I am of Anebta and 6 years living in Tulkarm - before in Anebta - 8-10 kilometres away - there were trees on land - don't know of land ploughed - two trees on land - some (?) or pomegranites planted - don't know area - I know ^{plf.} ~~him~~ - he may have come to garden to his brother - I don't remember seeing him - he may have come - I am af friend of plaintiff

and defendant - I am partner of defendant's son for one year
one fig tree and one pomegranite, mulberry and olives.

Rex: I came frequently from A. to Tulkarm - I was employed
as supervisor of wood here in Turk times.

3rd deft. Witness, Sworn:

Abdul Kadir Bitar - Land-owner - Tulkarm.

I know plf. and deft. - they are my neighbours - I know
land in dispute on which deft. has built - it was deft.'s
garden - for last 30 years - there is wall around it - I don't
know who built the wall - deft. controlled building of wall -
30-32
he is neighbour and I saw it done - wall built/~~22~~ years - I
used to visit deft. in house - trees in garden pomegranite
and ~~1~~ olives, deft.'s family took fruit.

XX.: I am 52 years old - don't remember if I was co-owner of
parties - this land was shared Bittar with parties - I heard
it was partitioned - in time of my father - it was partitioned
long ago - before wall - wall built after partition - I cannot
say exactly when wall built - I cannot say if more than 20
years ago - I know plaintiff as well as defendant - I did
not see plaintiff or children using this garden - I don't
know what is between brothers - I did not see plaintiff
building or planting on land - I did not hear or know of
partition between parties - defendant employed labour on
land - I did not work - I do not know labourers - I know
H. Awad - I cannot say if defendant's house in H.A. -,
cactus hedges covered all ground - I had half share H.A. -
defendant's house built after partition.

Rex: This land is common between me and the parties - wall
around our plot - don't know when built - I know nothing of
partition.

8

4th defendant witness sworn.

Sheikh Hamal +small. Magistrate.

I came from Anebta and live at Tulkarem- I have frequented Tulkarem for 20 years- and now here 4½ years as Magistrate and in 1929 for 1½ years- I have lands around that in Tulkarem- I was advocate in Tulkarem before Magistrate- I know H. Awad- it was surrounded by wall which included defendant's house- he used to sit in garden for 20-25 years at (times ?)

xx. I know two houses on land plaintiff and defendants- this particular plot attached defendants but dont know position between brothers nor saw defendant planting- nor saw building of wall.

By Court. Street wall was higher than that within which was same height as now.

5th witness sworn.

Daoud Abu Sheriffah- Merchant Tulkarem. Know plaintiff and defendant- not relative of any- I know new (stores ?)- defendant in possession of (site ?)- for 27 years- I am 42 years old- I am in habit frequenting defendant- there were trees in garden- defendant's servants planted and defendant supervised- never saw any one dispute defendants possession.

xx. I saw many planting garden- saw no one plough- nor any one actually planting trees- I did not see wall built- I dont know official position between brothers.

Rex. None.

6th defendant witness sworn.

Tawfic Tamimi- Mudir Mal- Tulkarem.

I have been Mudir Mal at Tulkarem for 15 years- I know land in which stores were erected- it belongs to defendant in his possession- this is extract from Urban property tax Register- it is in name of defendant- for land and house- block 2 parcel II plan of Urban property Tax- parcel 10 for plaintiff- the plan was made in 1929- and

CHAPTER I. THE DISCOVERY OF AMERICA.

SECTION I. THE DISCOVERY OF AMERICA.

SECTION II. THE DISCOVERY OF AMERICA.

SECTION III. THE DISCOVERY OF AMERICA.

SECTION IV. THE DISCOVERY OF AMERICA.

SECTION V. THE DISCOVERY OF AMERICA.

SECTION VI. THE DISCOVERY OF AMERICA.

SECTION VII. THE DISCOVERY OF AMERICA.

SECTION VIII. THE DISCOVERY OF AMERICA.

SECTION IX. THE DISCOVERY OF AMERICA.

SECTION X. THE DISCOVERY OF AMERICA.

SECTION XI. THE DISCOVERY OF AMERICA.

SECTION XII. THE DISCOVERY OF AMERICA.

SECTION XIII. THE DISCOVERY OF AMERICA.

SECTION XIV. THE DISCOVERY OF AMERICA.

SECTION XV. THE DISCOVERY OF AMERICA.

SECTION XVI. THE DISCOVERY OF AMERICA.

SECTION XVII. THE DISCOVERY OF AMERICA.

SECTION XVIII. THE DISCOVERY OF AMERICA.

SECTION XIX. THE DISCOVERY OF AMERICA.

SECTION XX. THE DISCOVERY OF AMERICA.

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SECTION XXII. THE DISCOVERY OF AMERICA.

SECTION XXIII. THE DISCOVERY OF AMERICA.

SECTION XXIV. THE DISCOVERY OF AMERICA.

SECTION XXV. THE DISCOVERY OF AMERICA.

SECTION XXVI. THE DISCOVERY OF AMERICA.

SECTION XXVII. THE DISCOVERY OF AMERICA.

SECTION XXVIII. THE DISCOVERY OF AMERICA.

SECTION XXIX. THE DISCOVERY OF AMERICA.

SECTION XXX. THE DISCOVERY OF AMERICA.

SECTION XXXI. THE DISCOVERY OF AMERICA.

SECTION XXXII. THE DISCOVERY OF AMERICA.

SECTION XXXIII. THE DISCOVERY OF AMERICA.

SECTION XXXIV. THE DISCOVERY OF AMERICA.

brought up to date year by year- Abdul Rahim Hanon Tawfic was Engineer to build and form member- assessment made public and all owners served

KxH. Awad registered No. 965- in name Abdel Rahim and brothers- remained so registered to 1928- I dont know if A.Rahim paid werko- brothers settle a/c between selves- plan was published exhibited on Co. office- assessment sent to each owner- plaintiff has lived here to 3 two/years- too old to leave town- I dont know if plaintiff living here in 1929.

Rex. I know plaintiff's sons- they have lived here since I was appointed in their fathers house

Defence calls no further witnesses.

Counsel

for plaintiff. No case of prescription made out-

evidence nonsensical and supports no such case- not evidence of possession far less of adverse possession.

Court calls on plaintiff's evidence.

Plaintiff calls:

Saleh Saad Jallad- Fellah- Tulkarem.

I am about 53 years old- I know land in which stores built- and houses of parties- I know land in common- plaintiff built and three years later defendant built- land bounded West by road and East houses or road North West Barkawi and South Bittar- I know land was common- dont know private arrangements because road made and both brothers built houses- I did not see wall built- I rarely I pass there

xx. Site of shops was planted trees nothing to possess- nothing to (eat??) only sitting place- one plot with road in centre. Road divides property -dont know who owns it & 3- I go to defendant some times- I know dividing wall 20-25 years- I used to see defendant sitting in garden- saw no workers in garden.

Rex. None.

By Court. I used to go to defendant by common road- I once found gate to defendant's house locked- defendant opened it.

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The first of these is a very small one, and the second is a very large one.

2nd. Plaintiff's Witness: SWORN.

Hussin Mikhdad - Agricultural Adviser I.C.I., Jaffa.

I formerly lived Tulkarm, born there and as boy - I know land in dispute- Land in dispute is common property of parties from personal knowledge. I am son of Plaintiff. We used it in common- always hired our property- we used it in when young to go to land, pick fruit of fig trees and pomegranates. Defendant never objected nor we to Defendant coming to one side. Before and after Defendant made the small wall- originally low stone wall 20 cm. high. My father built it. I don't remember seeing it built. Later wall raised to 75 cms. I believe by both brothers. I take it for granted this was so. My father supervised raising wall and wall on South of property. Defendant erected fence above. Perhaps during war perhaps after, can't say within 2yrs. My father would never have objected to brother doing this to protect flowers to please visitors. Many other properties in common between us and ~~my~~ uncle, this is the last of them - 4-6 years ago we partitioned all except this, and perhaps a parcel on hills-

XXd. Garden is H. Awad, entrance by wooden door, There is plot surrounded by wall, this plot not all H. Awad. Stores on South West, plot South of common road- belong to my sister- my brother Hassan rented them for her- built on land common between sons Haj Ibrahim- I assume leave was obtained- I don't know if work paid under father's name- or if father letting these stores- I am 35 yrs. old.- I don't remember West wall built.

Rex. None.

3rd. Plaintiff's witness, SWORN;

AHMED ABDULLA KEMI- No occupation, Tulkarm.

I live on my property- my son support me he is school master- I know land- it is common between sons Haj Ibrahim Haj Ibrahim used to buy in names of sons- don't know who planted trees on it- nor who built wall- old street wall built by Plaintiff.

XX. Plaintiff's father purchased land- I don't know who in present possess. Land not divided- when plaintiff built his house he was in possession and defendant of land with stores.

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Plaintiff calls no other witnesses.

Adjourned to 8.12.37.

1.12.37.

Sgd. S. Shihadeh. Sgd. L.R. Evans.

Pas as before.

Co. for Plt. Plaintiff produced kushan- but not plaintiff's khushan- joint interest registered- Defendants claim partition was made- no evidence of partition adduced.

Defendant admits original common ownership- Defendant not obliged when pleading prescription to admit origin of title- if he admits such origin as here cannot claim prescription- Art. 20 Land Code.

II. No evidence by Defendant of possession- No evidence of conclusive and adverse possession- refers L.A. 121/26 P.238 P.L.R. In order prescription between Co-Heirs- co-owners possession must be clearly adverse- during title as co-owner-

No evidence of such possession- evidence must be relative to relationship of possession.

Defendant in Court~~xxx~~ this all proceedings and gave evidence.

III. Khushan shows co-owners- Defendant Khushan refers to house- Khushan for house- given for new buildings and not for partition- for building requires no plan and neighbours signature.

Plaintiff's Khushan 1332 as against 1323- and this Khushan given on partition with Bitars- to which partition Defendant was party and his admission on partition is irrebuttable.

Our case good on Khushan and Defendant's admission- Defendant only plea prescription fails- ask declaration of co-ownership i.a (1) Khushan of 1332(May)- whereby we are owners of 1/3- with costs.

Co. for Defendant: Plaintiff says we rely on partition- not so- Rely on proceedings 12.6.37 where Court held admission did not bar plea of prescription- no need to give evidence of partition- defence is that land in dispute is part of land registered to us under Register 1323- showing West. boundary as road- This

• • •

Our werko.

Hassan Mikdadi
Tul-Karem 6.4.37

The District Officer of Tul-Karem.

Sir,

I have the honour to request that you would kindly transmit
Revenue Dept.
this application of mine to the Treasury to show the name of
the payer to the Werko in respect of the plot of land known as
El Hakoura, registered at the Treasury under General No.965,
and also the date when werko was begun to be paid on the said
land, as also all details which may be found in connection with
the payments imposed by the Werko on the said land

sgd. Hassan Mikdadi

(C)

The land known as the El Hakoura, registered under General
No. 965, is in the name of Abdul Rahim Eff. el Haj Ibrahim and
brothers. There is no express entry in our books to show the
date of the transfer of the said land to the above mentioned
persons. And naturally the Werko is collected, with all the
property registered in the Werko books, from one of the owners
who settle the account between themselves, because the tax-
collectors of the past did not show the name of each payer
separately.

6.4.37 Director, Revenue Dept.
Tul-Karn.

Magistrate's Court, Tulkarem.

Civil Case No. 207/37.

Plaintiff:- Abdel Rahim el Haj Ibrahim Ismail of Tulkarem.

Defendant:- Abdel Rahman Eff. el Haj Ibrahim of Tulkarem.
Sheikh Abdel Latif Eff. el Haj Ibrahim Ismail
of Tulkarem.

The attorney Awni Bey said: I admit the contents of this Mazbata and I prove by means of the Mukhtar of my quarter; because when the Mukhtar who has sealed this Mazbata is called by us, he will say under oath that, that plot is possessed by Abdel Rahman Eff. el Haj Ibrahim, because this produced Mazbata comprises all the land and indicates that the land bounded by so & so is under the possession of Abdel Rahim and Abdel Rahman el Haj Ibrahim; and if the Mukhtar comes here, he admits that the plot of land bounded by so & so is possessed by Abdel Rahman Eff. since 30 years, and I say that this land mentioned in the produced Mazbata belongs to my client Abdel Rahman Eff. el Haj Ibrahim and his brother Abdel Rahim eff, but this land has been long ago divided between the two in the Tabu.

A true copy of the original of the first part of the sayings of Awni Bey the attorney of defendant Abdel Rahman Eff. el Haj Ibrahim Ismail, before the Magistrate Zaki Bey Tamimi at page 5 of the Court record of Saturday 13.2.37.

Inspection Report.

In accordance with the decision of the Land Court Nablus Sitting at Tulkarm, we were appointed experts, in the case brought by the Plaintiff Hassan Eff. El-Mikdadi ^{attorney} on behalf of his father Abdul Rahiem Eff. Haj Ibbahim, in order to carry an inspection on the building built by the Defendant Abdul Rahman Eff. Haj Ibrahim. We the experts, Georgi Eff. Dhlan, Haj Nimer Eff. Abdul Kader and Hassan Eff El-Mikdadi, on 1.12.37, inspected the said building and found the following:-

Expert Haj Nimer Eff. Abdul Khader of Tulkarm: "In accordance with my personal knowledge of the case between Abdul Rahman Haj Ibrahim and his brother Abdul Rahiem Eff Haj Ibrahim; I on this day went with the District Court in order to understand the point of dispute between both parties. In accordance with my personal knowledge, since 32 years until the present date I know that Abdul Rahman Eff (Defendant) is in possession of the building standing on the Eastern side and that in the Western side till the road, there was an old wall before the constructing of the new building. In the Southern side there is also an old wall. Abdul Rahman Eff. owns independently this plot and the building standing on it, since the date which I have already mentioned until the present date.

beside
Abdul Rahiem Eff. had constructed a house ~~near~~ the house of Abdul Rahman Eff. from the Southern side. In respect of the ^{land} situated on the Southern and Western sides, ^{reaching the road} it is in the possession of Abdul Rahiem Eff. and on its Northern side a wall has been built by him. A door is standing there between the parties, and all of them (i.e. Abdul Rahman Eff. and Abdul Rahiem) pass through that door. Each person of them is independent in the land and the building, standing on it, which he owns."

1.12.37.

Sgd. Clerk.

SGD. Nimer Abdul Khader.

1.12.37.

Statement of the Plaintiff's expert Hassan Eff. Makdadi.

"The boundaries stated in the Kishan of Abdul Rahman Eff. Haj

Ibrahim (Defendant) do not comply with the fact, and it is as I think only contains his house as it is stated, new constructions in the Kushan, and in this Kushan there is two weak points.

(1) The Eastern boundary as stated is the road, and this bounds the house only, and if it bounds the house and the land in dispute, then the Eastern Boundary should be road and sons of Haj Ibrahim.

(2) The Southern boundary as stated is Abdul Rahim Eff. and this bounds the house of the Defendant, and if it bounds the house and disputed land, then the Southern boundary should be the house of Abdul Rahim and the property of the sons of Haj Ibrahim.

There is also a weak point in the said Kushan dated 1323 Fiscal. Whereas the disputed land was on 1310 Fiscal registered in the name of the sons of Haj Ibrahim, and on 1332 Fiscal it was ~~par~~ partitioned with ~~Selim~~ Assad El-Bitar, therefore it is not imaginable that it was registered in the name of Abdul Rahman Eff. on 1323, while it was partitioned only on 1332 in the name of the sons of Haj Ibrahim.

According to my personal knowledge the matter of possession is of no value at all, because the disputed land and the Hakoura was used and cultivated by Abdul Rahim Eff. and Abdul Rahman Eff., and there was no difference between the two brothers. The matter of possession was fabricated by the making of a railing which was made for the protection of the flowers and trees, and Abdul Rahim Eff. did not object to this act, as a curtesy, because he and his sons used this garden as a place for Recreation and also used to gather the fruits of the olive and g fig trees, in any time they wished.

I hereby gave this statement to certify the facts.
1.12.37.

Sgd. Clerk,

Sgd. Plaintiff's Expert,
H. Makdadi.

1.12.37.

1.12.37.

I took the statement of the Court's expert, called Georgi Eff. Dhlán, and it is as follows:-

"The disputed land is between the Plaintiff Abdul Rahiem Eff Haj Ibrahim and the Defendant Abdul Rahman Eff. Haj Ibrahim.

According to my personal knowledge it ^{is} in common between both parties. Afterwards Abdul Rahiem Eff. Haj Ibrahim constructed a building on the Southern side and after him Abdul Rahman constructed a building on the Northern side, and they have made a gate separating between both of the parties, and each of them has the right of passing through that gate. Since an old time I used to notice that Abdul Rahiem Eff. Haj has the Southern side and Abdul Rahman Eff. has the Northern side, and this is my knowledge in this regard.

1.12.27.

Sgd. Clerk.

Sgd. Georgi Dhlán,
Court's Expert.

Khushan issued by Abdul Rahman Eff. Awad not by Defendant.

Rely on possession exclusive and adverse of plot shown in Urban Property plan 11.- Have given evidence of reliable witnesses of Defendants- exclusive possession as a garden- wall built around land in dispute- Plaintiff's witness admitted door in this wall locked and opened by Defendant- Plaintiff claim not clear as to share claimed or if claim against 3rd. brother also- ask dismissed claim- costs and fees.

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(5)

(5) since I came to T(kara or knew town.

Rex.

I never saw RAHMAN ~~plucking~~ plucking fruit, etc.
on this land - it was in his control - in front of his
house - never saw either party using it.

Co. for plf.

Kushan put in by plf. shows 3 ----- owners - and
our kushan later than defts. - defts. kushan refers to
house only - no kushan of plffs. house - but our kushan of
W. land is issued on application of all parties.

Co. for defts.

Onus on plf. he must prove partnership

(10)

1. The first part of the report is devoted to a general

description of the work done during the year.

2. The second part is devoted to a detailed description

of the results of the work.

3. The third part is devoted to a discussion of the

results of the work.

4. The fourth part is devoted to a summary of the

work done during the year.

5. The fifth part is devoted to a list of references.

AFIF KHOURY

ADVOCATE

HAIFA

P.O. B. 1555

Phone

عفيف خوري

محامي

حيفا

ص.ب ١٥٥٥

تلفون

In the Supreme Court,
Sitting as a Court of Appeal,
Jerusalem.

IN THE APPEAL OF:

Abdul Raheem El-Haj Ibrahim
of Tulkarem represented by
Messrs. Henry Gatten and Omar
Saleh Bargouthy of Jerusalem

APPELLANT.

And

Abdul Rahman El-Haj Ibrahim
of Tulkarem represented by
Afif S. Khoury of Jenin and
Abdul Munelm Gashieh of Habbus

RESPONDENT.

Land Appeal No. 251/37

STATEMENT OF REPLY

1. The Notice of Appeal does not conform with the requirements of Section 38(b) of the Rules of Court dated 15.10.1935 and published in Supplement 2 of the Palestine Gazette NO.582- in that the Appeal is lodged against the "wrong" party.

2. In his Notice of Appeal Appellant has not based himself on a point of law for which an Appeal could be made as provided in Section 4(1) of the Land Court Ordinance. Appellant's Grounds of Appeal are only a group of criticisms of how the Lower Court had weighed the evidence before it, and Appeals against findings of fact and satisfaction of a Court are not legally entertained.

3. The Court was right in finding as it did that "the older Kushan is that of defendant (Respondent) as the date of the two title-deeds justifies the finding. Consequently it could hardly be said that "there was a misapprehension on the part of the Court." Nevertheless the two title-deeds were properly translated and the meaning correctly conveyed to the Court of trial.

Even if, for arguments sake, the title-deeds were not translated there could be no miscarriage of justice and a translation of the Kushans would not have changed the situation and the Judgment of the Court; for Respondent (Def)

ax.

accepted service

No confusion

sufficient description
of land case

P.C.L.A: 5/36.

Not "wrong" party

copies of title
deeds annexed

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ADVOCATE

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-2-

based his defence on Adverse Possession in addition to the title -deed, and the Court in its judgment clearly said that the Kushans "throw little light on the ownership of the land disputed" thus relying in its order on the defence of Possession for more than the period of prescription. In other words the Land Court attributed little weight to either Kushan produced in evidence before it.

5. Respondent (Deft.) proved his ownership of the land in dispute to the satisfaction of the Court by: (1) old registration in his name, (2) herko certificate, (3) the oral evidence of witnesses of both parties who came before the Court, and (4) the Court's visit to the land and inspection thereof.

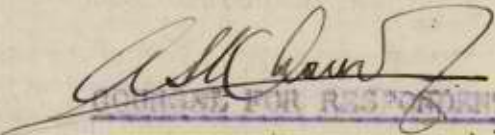
6. The Court had itself inspected the land ~~xxx~~ in dispute with the Experts and was satisfied of the existence of a stone wall. Appellant's (Pltf.) witnesses also admitted the existence of a physical partition from an old time around the land in question.

7. There was no such admission as alleged by or on behalf of Respondent (Deft.)

8. The fact that the Parties are brothers was raised in the Court below and it could hardly be said that the Court "did not sufficiently take it into account when considering Possession". Moreover this is not a question of law on which an Appeal could be made.

9. It is within the Power of the Land Court to decide questions of ownership of Immovables and order the registration of such Immovables.

For the above reasons application is hereby made to dismiss the Appeal with costs and Advocates' fees.


SIGNED FOR RESPONDENT.

Documents Annexed:-

1. Two copies of the Statement of Reply to be served on Appellant's Attorneys.

صاحب ملک و شمس ملک علیہ السلام اوفایرتادی و غیر الحقیقی علم و صواب اسعد الله و سجن بکابر
تحت به ماسر علی علی الرغوة الشریفة مسئلته و صحت ان احدا لم یعمی علیها غیره من افاض
باشری فی سائر مخارن فی الحاکمه المتکوره بدو کاسمه و حق مسرور لکن یطلب شمه
الحاکمه المتکوره قضا و نوقیف البنا

بالمكانة الجارية وجاهاً ابرز وكين المدعي الموقوف هو به قضناً أن الهاكورة المدعي بالسيف
عليه السلام وعبد الرحمن أف خا صه وبرز وكين المدعي عليه عوفي بك كتاب من احد الوصفا
الماضية الموقوف هو المذكور بنصفه انه عند ما انه الموقوف كان بحالة غيبوبة وأن الهاكورة
المذكورة مضمومة بنه الموقوف عليه السلام أف المدعي وعبد الرحمن أف المدعي عليه قديماً
مكروه بالسيف بنصفه منفرداً وعليه قرينة المحكمة لرسوم سماح ما مضية الموقوف هو المذكور
لنستفاد منها ولدي استماع شهادتها لها المختار محمود الشيخ قاكم والموقوف هو قديم
بعد قسمته من شهادتها أن الهاكورة الموقوف بنصفه هي عبارة عن مائة مائة بنصف
عليه السلام المدعي عليه قديمه بنصفه قديمه بنصفه المدعي عليه السلام أف قديمه بنصفه
منفرداً وذلك الصورة لا يمكنه فيها المضمومة اما المدعي عليه السلام
الشيخ عبد الله أف فقد قد بان موكله عبد المظفر أف بأن الهاكورة المدعي برافضه
قديماً بنصفه ثمانية وقديمه ثمانية بنصفه عبد الرحمن أف والقبلي بنصفه عبد السلام أف وليس له
صيت إن اجبت بالسيف خارج عن صلاحية محاكم الصلح لهذا واستتار التمارك من قانون
مقام الصلح اقرار ردحك الدعوى لعدم اصداد حبه وقضيه المدعي لرسوم والمصاريف عشرين
دعوى حاملي المدعي عليها قرا وأجابهياً فابن المدعي استأف عليه وقدم علينا ا. ب. / ١٠٠ / ١٠٠ / ١٠٠

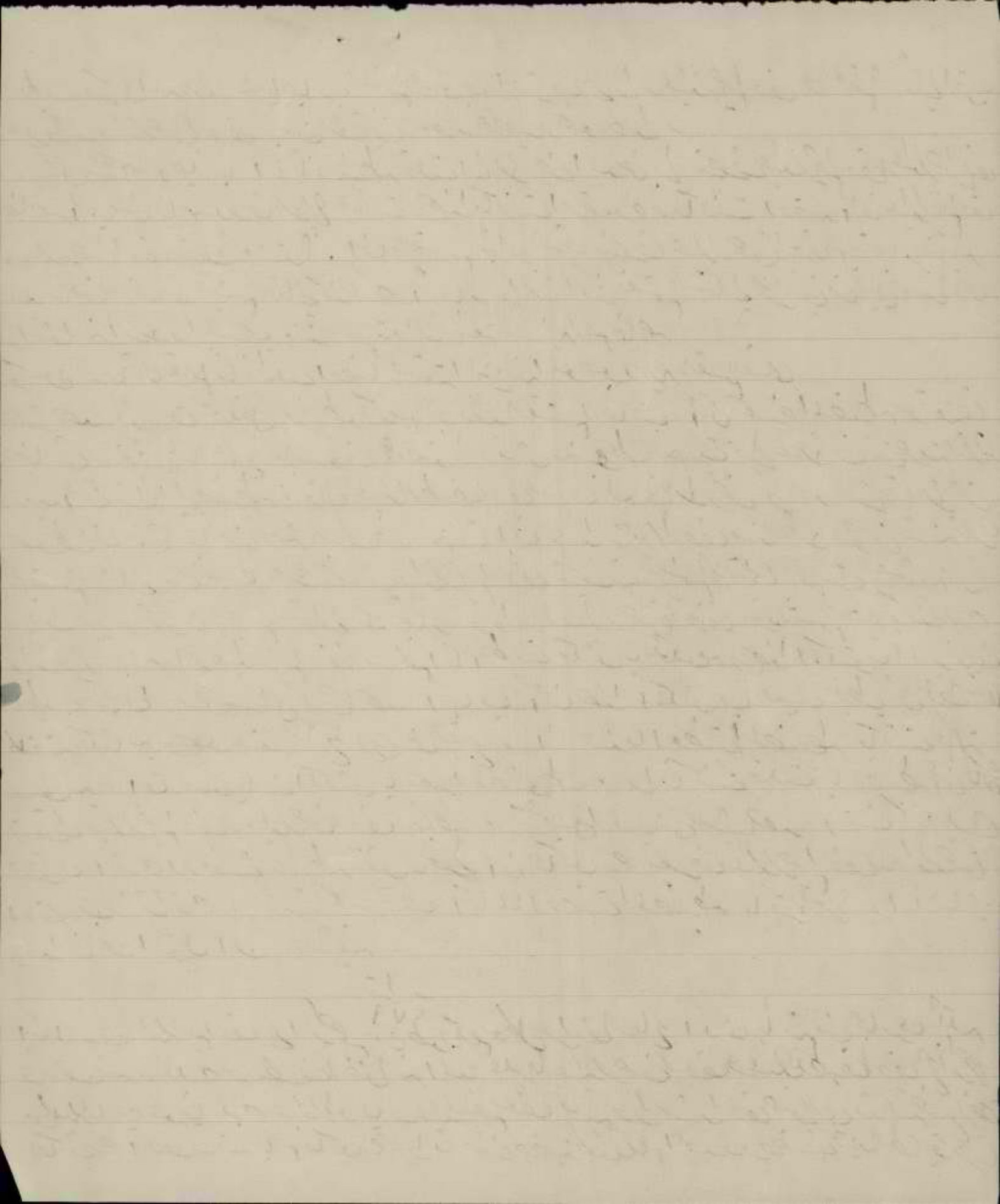
عبدالمجید
رضی اللہ عنہ

دالة عليه من انفا للمعاينة عوني بلب وارتد عوني مؤخره | A/ ٢٧

24/5/112

عنه عن النبي صلى الله عليه وسلم : ٦٦

و هذا و قد عرف عبد الرحمن ان هذا هو خويجي و هو من
مطالع موقفة من محمد بن عبد القادر و محمد بن عبد الله و
و هذا و قد عرف عبد الرحمن ان هذا هو خويجي و هو من



الحكمة قد تفرس سابقاً هذه الماحنة لزوم الاستيفاء من موقوفها لمصلحة العامة
فإنهم أجروا المختار والموقوف يوسف أفندي لتوضيح التباين الظاهر بين موقوف المصلحة
ومن الأوراق التي أبردها وكيل المدعي عليه وتقرر عليهم بأجله الماحنة فانبأ على القرار
المذكور اقرار سماع شريعة الشاهد به المذكورين

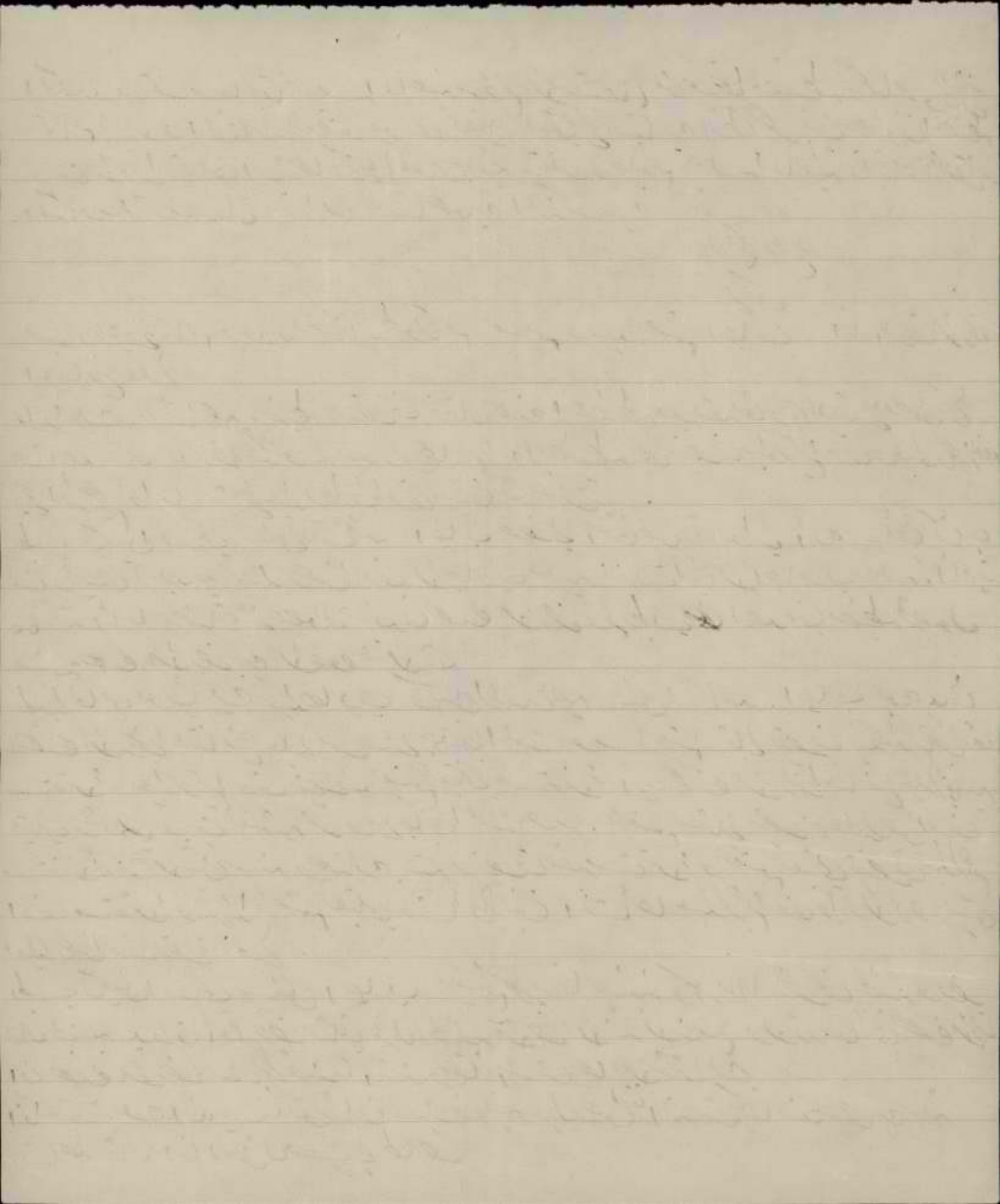
عالم الصالح

صوبه شيخ قاضي حيدر مختار المحولكم مسلم وبعد اقسام اجابات انا اعرف الاول
المسارح فلك

ما رأيت الشاهد مضطرب انصرف فقال هذه المصلحة موقوفة بني وهادق على موقوف
الشاهد قال المصلحة المذكورة حدودها هذه المصلحة هي نصف عبد الحكيم فخا وعبد الحكيم فخا
ابو الرحيم واما ابنه عبد الحكيم فخا فليس له ثلث
طلب وكيل المدعي سئل الشاهد اجاب مضطرب استخفى من قالوا لي انه سياتي كتاب
من رئيس البلدية عبد الحكيم فخا لاجاب عليه فضلت اني لاجاب عليه انا عرفت
هـ سنة انا ما حضرت على حصول سنة في هذه الاول في طلبه فاحد في مصلحة حصول
حسنة هذه الاول في هذه الاول

لجانب المحامي عوفي بك عبد الحكيم فخا وكيل المدعي عليه سئل الشاهد اجاب بوجه في
هذه الاول المختار على مر وعلى جانب الممرسور القسم الثاني نصف عبد الحكيم فخا
ستفاد وعبد الحكيم فخا نصف القسم الثاني استفاد اي هذه الاول المختار على عبد الحكيم
قبلي وشيخي وبين القسم مر وعلى جانب الممرسور القسم الثاني نصف عبد الحكيم فخا
ستفاد منذ ثلاثين سنة وهناك سنة ونصف سنة استفاد والقسم الثاني نصف عبد الحكيم
افد استفاد وشيخي القسم الثاني منذ ثلاثين سنة انت اها عبد الحكيم فخا ولا ولا وليس
لعبد الحكيم فخا نصف فخا

لجانب وكيل المدعي سئل اجاب بفسم كل منها حسنة وكل منها نصف حسنة ونصف
على الحسنة بدون ان نصف الثاني عمل الحسنة آتت لانه لا بد من ولا درس في هذه الاول
ان هذه الاول المسمى بالحسنة استردوها استردوها استردوها
اذا قلت لك انه يذنا قوسان نصف في عبد الحكيم فخا انه شريفا منذ عشر سنة
الشاهد قال انا اقول حسب الظاهر



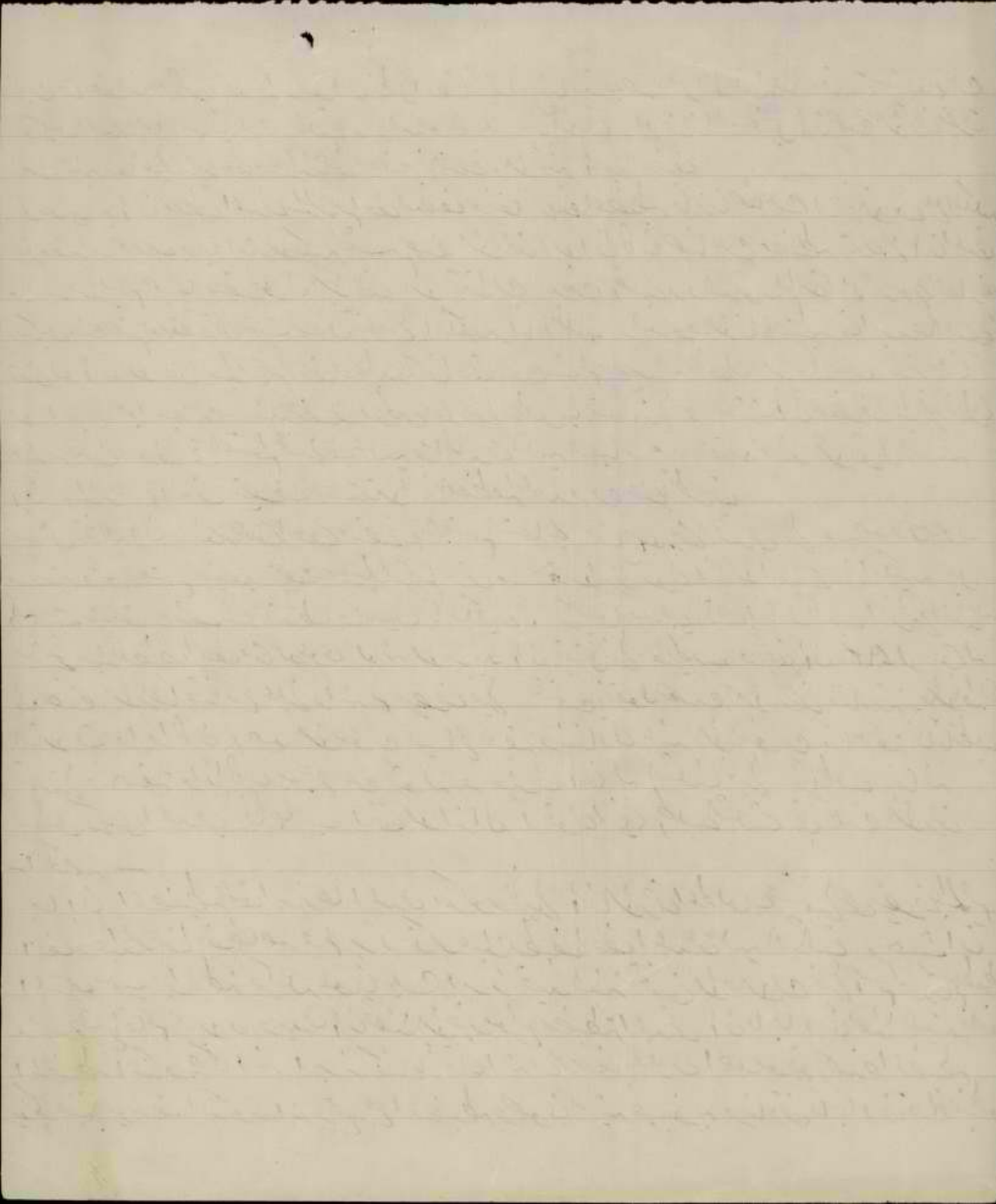
افضاً فاحرر اجتماع شراذم المختار وبيد في الخليل المذكورين لتوضيح ما جاء في المصططه المذكوره
وانتظاراً لجليلها تأجلت عليه يوم الأربعاء ١٧/٤/٢٧ الهجره بعد ظهر يومه عندنا ١٧/٤/٢٧
عليه انه اذا دفع المدي مائة من كل منها يصير عليها بئر لجة الحكمه
عليه يوم الأربعاء ١٧/٤/٢٧

هاكم صلح زكي بنك الشامي
هذه عن اصف المقتدر والوكيل العمومي علي المدي
هذه المحامي عوني بن عبد الرابي وعبد المقيم فافوا سداً فافوا ولجليلهم اقررتنا
عليه يوم السبت ٢٠/٤/٢٧ الهجره صافاً وتقررتنا ١٧/٤/٢٧
عليه يوم السبت ٢٠/٤/٢٧

وكيل المدي قال سجل عتراضي على دعوة الشهود أي شهود علموه في الهويه لانه اول
قدنا انه لا يوجد لزوم لعلومه في الهويه حيث صدرت عدة قرارات من هذه المحكمة
وصدقت استئنافاً ثانياً في خلاصه على هذا الحكمه وهذه المصططه الهويه وفيها نص في عترتينا
والماره من قانون نفسه المموال الغير مقوله وقال الماره المذكوره على
نحن ابرزنا مصططه اننا نتفق ولا رضا ان كان غيرنا نصف المراه هنا تقررتنا ولا يعني هذا لا يلزم
منا اتيان نصف باقي الشركاء وازا اجماعاً نصف وادعى أن هذه المصططه غير صحيه او انه قد
وهو انه غيبويه او مثل هكذا على المدي عليه اتباع الطرف هذه ونحن الحكمه لا تدبر فيه
النفطه فثالثه الماره من نظام الحكمه يقول وهذا قال الماره المذكوره عندنا وبناد
على مصططه انصف والمجاوريه والخياريه بينهم خوشتان الها ابو واريداً هذا ان هذا التوثيق
وضع عليه من قبل المدي والاشدته والى مشركه بين الشدوت ولدت في خوشتان الها ابو
موجود مصططه الهويه موجوده وهذا كما في ولما قال المدي عوني بنك اننا نتفق
جن نصف والمدي عليه في هذا جزر وهذا عترافي لجليلهم منه اننا شركاء وهذا عترافي
رسم من عوني بنك أن المدي في حق الها ابو فافوا هذا جدياً واتباعاً لجليلهم بينه
على أن المدي في شركه وأن الطرفين اتفقتا رضا واهباراً فليس هناك قسمه
ورحب أن تجري القسمه.

بين المؤمنين المتكوت وادعوا ان نزل ايضا واما الذي ورد على الاخوان المتكوت في حديث
وكيل المدعي عليهم عوفي بل طلب رد الدعوى طلب عوفي على فرض المسخيل ان كانت الأرض بغير
المستند معا عليهم افعالهم فليس من افعالهم فالتفت به المستند أي النصف
ولم يريد ان يعطى المدعي غير النصف من النصف واما لجهة المضطه فوازن هناك اخذ في ملكه
على مقدار النصف وبما انه لا يملكه قسم هذه الأرض الا اذا كان هناك مضطه تدل على ان المدعي
والمدعي عليهم جميعا متفقون بمؤلف المستند ان ذلك المحل رد الدعوى طالع مع الرسوم والمصارف
التي يكون عليها النصف قال حجت حسن تاريخ بالملكية انا اطلب رد الدعوى لأن المضطه التي ابرزها المدعي
تقول ان الأرض لغير المدعي من افعالهم فليس من افعالهم فالتفت به المستند أي النصف
لما اراد جواب على مستند المدعي موكل بمؤلف المطلوب قسمنا واحققنا ان المدعي واقع فظن
عليه من النصف في القسم لمختلف عليه والمحدث عليه البناء مستند من الملاكون سنة
ان عليه من النصف مستند في المضطه المحذوره عنيا الطريق
سئل فقال ان عليه من النصف مستند في القسم اشكاله من افعال المدعي بل صعد المدعي
مستند والقسم القليل من افعالهم فليس من افعالهم مستند وآتوا انا لا احيى في الملكية بل
الحيث تعلق منصف فقط وليس بالملكية وكيل المدعي قال انا اطلب افعال المدعي
استوى على النصف افعال من الدعوى لانه لا يريد ان يتنزل في ذلك ويجب ان يكون له
في هذه الأرض التنازع على وانه لم ينفذ في ذلك فحين نقول هذه الأرض ملكه متباعدة بملكوته
المتكوت واذا كان احد الاخوان يباح حقه وينازل عليه الاخوان فاصفة فاما طلب
قسمه فاصفة واذا كان يرجع عن قوله ويعترف ان له اقل من غير فاطل بقاءه
سئل وكيل المدعي فأجاب اني لا ازال اقول اني اطلب اقل من في هذه الأرض
الحكمة -

بما ان المضطه التي ابرزها المدعي مذکور في كتابه انا الأرض المطلوب قسمنا هي في غير ملكه
افق وعليه من النصف خاصة ولم يرد ذكره على النصف افعال المدعي عليه السالك وحجت ان
المدعي عليه بواركه وكيله عوفي بل ابرز قيد حصة تخمين الملاك في كتابه اسم المحقق في المطالب
ومسرح شيخ قاكم هو وريد ان هذا الموضع مضطه المدعي ان ما جاء في هذا القيد خلاف
المضطه المذكورة كما انه ابرز كتابا قال انه من افعال المدعي اعد موقفي هذه المضطه
يذكر فيه يوسف المذكور انه وقع على المضطه وهو في شبه غيبوبة وناقض ما جاء في تلك المضطه

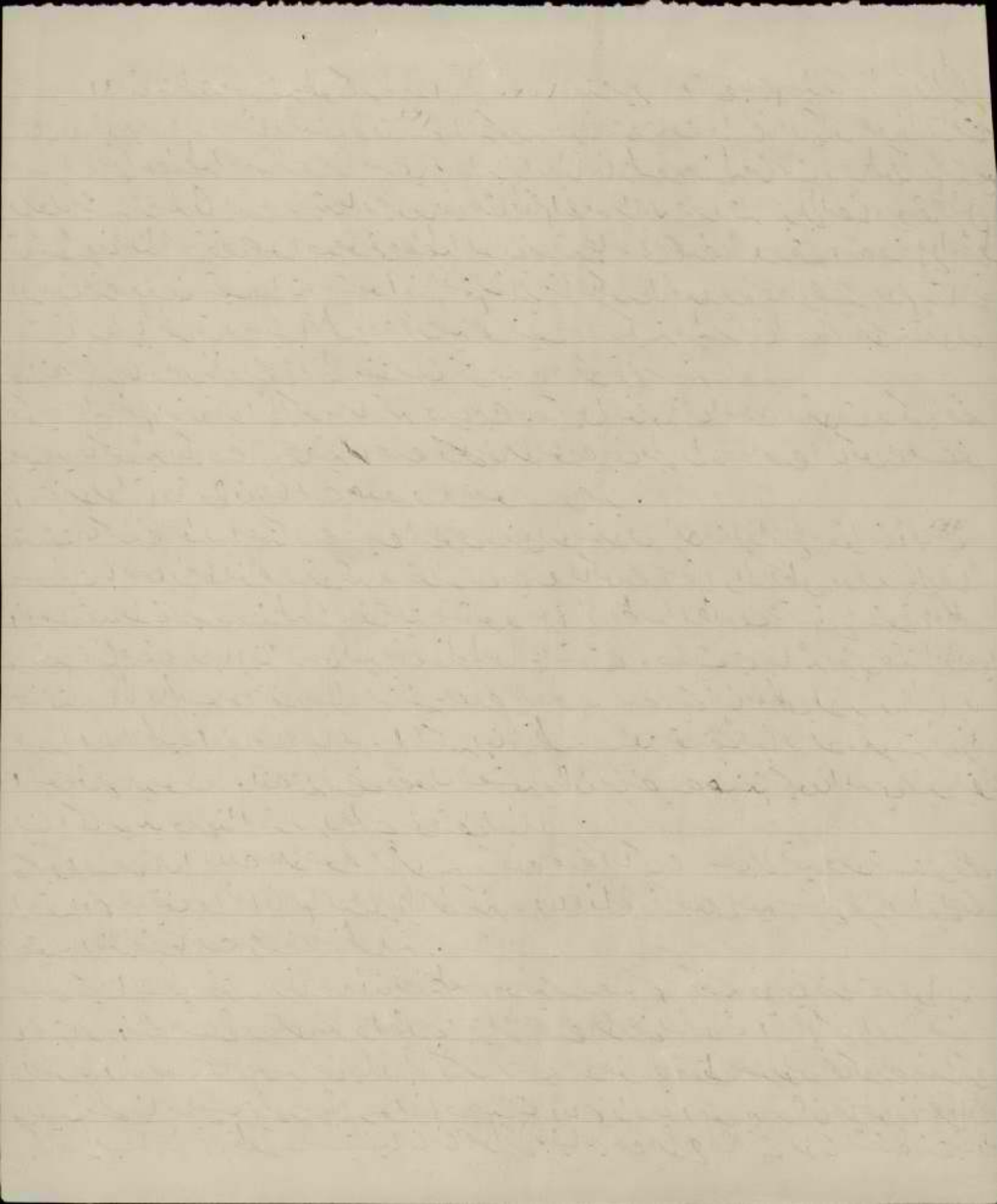


شبه ١١ في منطقة مدينة طولكرم ومما ذكره ١٥٤٠ متر مربع معتبر باسم عبد الرحمن أفندي
قال عوفي به ان المختار الذي كان ٩٤٤ المذكور اسمه في مشروعات دائرة البوركو هو ذات المختار
الذي وقع المصلحة المبزور من المدعي ، واربز ايضا خارطة ومصلحة من مختار طولكرم محمد
رسل محمد بن عبد قادر واستعداد بحول من القائم مقام المدعي رسل دورقه بندير امضاء بوقه الخليل
قائد ان هذا الشخص هو احد موصي مصلحة المدعي وقد جاء في هذه الورقة انه وقع على المصلحة
على عين غره دون قيد وانه شهد ان القسم الثاني من الماكورة المحدود هو كسره عليه السلام بقاوي
شرا وعربا لطيف وصوبيا لطيف على وجهه هي نصفي ومليكة عبد الرحمن اوصافه المذكور
وانه شجرها وحوزها ورضي بها من مئة تزيينه المذكور سنة
وكسب عليه السلام احتفال انا اكرر ما قاله عوفي به . وكسب المدعي قال الملك للسلطنة ولكن حقيقة
ميريد ما كونه الماكورة الرسمية له وكل من الماكورة بني ملك رار وهذه الماكورة مستند
استقلال تاما وان هاتك حدود وصور وصور .

ثقت الماكورة عوار المذكور هذه الدوى وفي المصنوع بيلان او اربع سنوات أي ٩٤٤
سجبت باسماء المصنوع المذكور وقد عرس بين الماكورة التي راكظ الدور وايضا
انا مستند لان ابرز مصلحة واحض عليه شهور غير ان المصلحة المطلوب تستمر بنفسه موكل
وعليه ان يحف وبما ان المدعي عليه بني في المصلحة بضمته وصحت في بناءه غير من المصلحة
ضمته فانا اطلب لتوثيق البناء لشدة هذه الدوى وصحت ان موكل لا يريد البناء
لهذا انا اطلب ان يوافق البناء . المحكمة ان اتفق مسئلة توثيق البناء لا عداوة لهذا
المصنوع بالمدعى وانه على فرض حصول الضمته وكان من نصيبه حينئذ يكون المدعي محرم بالبناء
البناء كما يريد ولهذا اقرر وطلب توثيق البناء .

وكسب المدعي قال الملك للمصنوع المذكور وتكون هذه الماكورة بين لاقية ولا تستمر في
واقعة اقام البتين وانا افاهم المدعي عليها الاشارة ، اما ان كان المدعي عليه الشيخ عليه السلام
بقول انه غير مائل في نظر عنه .

سئل وكسب المدعي فقال رغا عن ان مصلحة المصنوع محروم باسم شخصه فاني قدوت دعوي
باعتبار ان المستأجر له واهل بيته والملك المذكور في المصنوع اقام كسره عليه السلام
واقول ان ورقة المصنوع التي جاء بها ذكر رسمي المصنوع فقط هو الماكورة غير مشرو
وليس عليه بناء وليس عليه استجار وانما وصيت اقام دائري المصنوع وكان المصنوع بنيران
بنا وجب ان في ظل واستغنان من هو انكر لبنياه عن الموضع الثالث لان الضمته كانت بنار



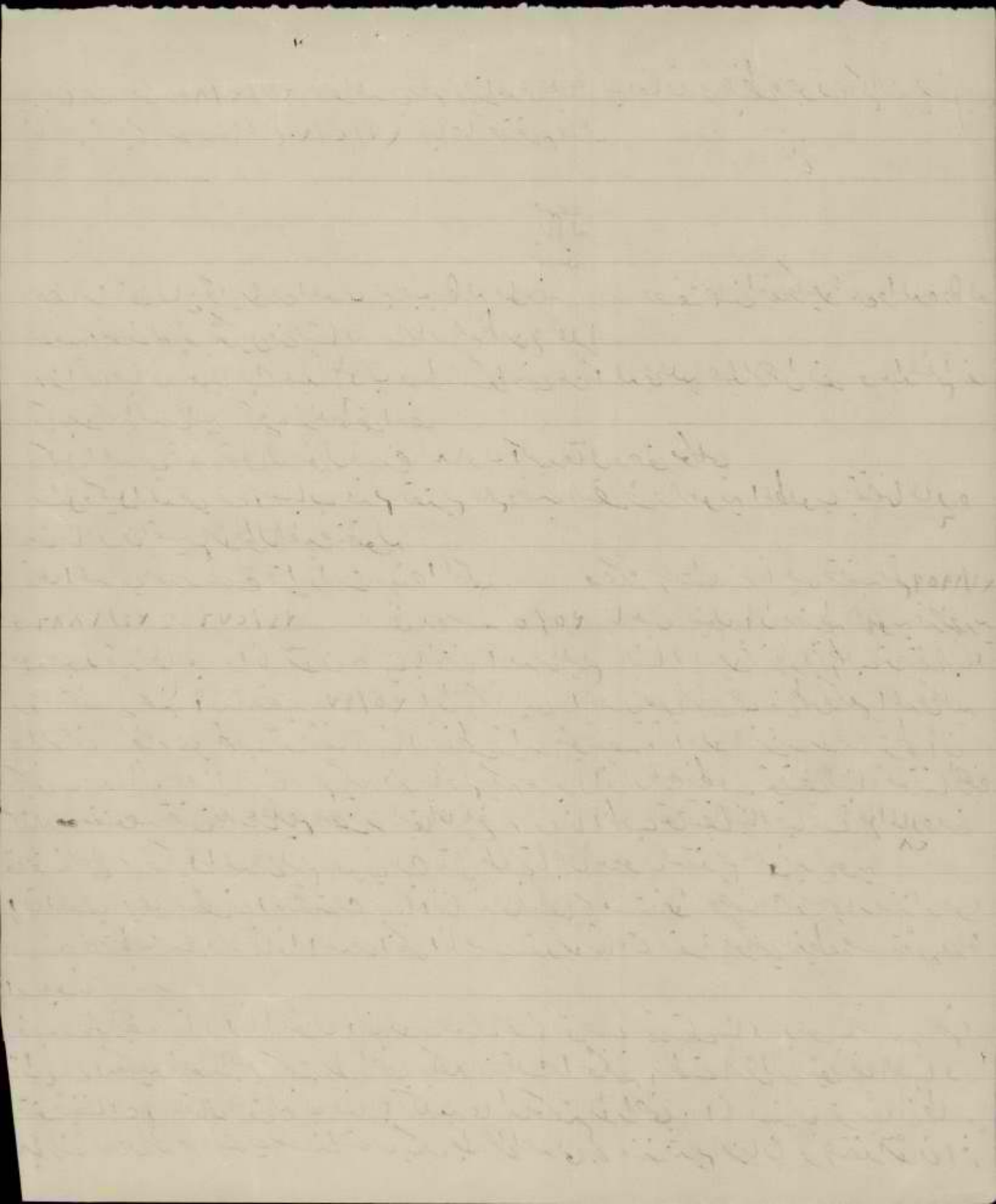
يوم الاثنين في ٢٧/١٨/١٨٠٧ حضرة المدعي ولم حضرة المدعى عليها لبيفان وابطال وجود حاكم الصالح بنابن
تأخرت تسليم مداريعاد ٢٧/١٨/١٨٠٧ صباها وتفرغ المدعى
فان

مسعى
بالكافة
ضمن

حضرة عمرا خلفه صالح وكيلا عن المدعى بموجب وكالة مؤرخه
عمومه نفوض له كل ما يتوكل من شأه وصار المطروح على
حضرة المحاميان عوني بن عبد الأدي وراستد اخف عن المدعى عليه عبد الرحمن فخ وعبد المظفر اخف
وكيل المدعى عليه الشيخ عبد المظفر اخف
وكيل المدعى قال قبل الدخول بهذه الدعوى اكرر مقال وجهي موكلني
سؤوكيل المدعى عن اسباب عدم تقديم علمه ضد الشك في الهويه المطلوب بقبضه المار
من قانون تقسيم الموال المفيد منقوله

قال المدعى صدر عنه قرارات هذه المحكمة
و ٢٤/١٨٨٦ و ٢٤/١٧٦ في دوسه ٢٥/٥ بنابن يقول أن مضطه الهويه غير كافية
مع وجود قيد الطابو وانا اقول ان حيث بانغنا المدعى عليهم بنابن لبيد نزارا لطلب توقفت البناء
ورستد على هذا أن الفقيه ٢٥/٤٧ ارجحنا بنابن المدعى عوني بن طهر كتم المدعى عليه
عبد الرحمن السفاري لطلب توقفت البناء فقط قراره توقفه اوله انظر لادستد ان
يكون قد بناه هذا البناء لم يكن قد بناه ولم يكن موجودا ولذلك لطلب توقفت البناء موقفا
كفله منقوصه تفنن المدعى عليهم انظر بانفا ما بلغ ، وانا اطلب توقفت البناء قياتا على المار ومن
قانون الصلح ، وكيل المدعى عليهم عوني بن قال طلبة بأجل الدعوى لتقديم علمه ضد الهويه
ان المدعى يدعي الشك المشتك وبما اننا ندعي الشك مستفاد وهناك استجار منذ اربعون
سنة في خطه محذره فاما المدعى انكر اننا مستدلانيات نفرض موكلني نقطة مستفاد
اربعون سنة

خصيصه توقفت البناء وانا اقول أن لا دعوى هنا توقف بناء بدعوى قسمه ضا
تراج على الملكية فلو راجع محكمة المراضى بمكة لتلك المحكمة اعطت القرار بتوقف البناء
توقفنا عن استعمال الحق الذي لنا بالملكية عائد لمحكمة المراضى . انا عني خوش ان طاهر
بلاض المدعى به وعندي سندات ويكن بل للمدعى به منذ قدم الزمان وعقدت ان



مكاملة ارض نابلس الموقرة
قائمة مزارع

✓

جنس اذوايه	ص	ص	آيدون
لحمه جوييه	١	١	٢
خارطه	١	٠	١
بور و بركه	١	١	٢
لحمه خبيثه اذوايه	١	١	٢
فراحمه لحمه	١	١	٢
قائمة مزارع	١	١	٢
	$\frac{1}{6}$	$\frac{1}{5}$	$\frac{2}{11}$

نقد ارضي فطحة وارده في

عبدالله بن محمد
الملك

...the ...
...the ...
...the ...
...the ...
...the ...

✓
✓
✓
✓
✓

...
...
...
...
...

15

land, it is to be presumed that the land is ^{still} jointly
owned by the three brothers - the fact that the
Defendant had been in possession of the ~~land~~ ^{northern plot} ~~for 20 years~~
for 20 years is immaterial. The plaintiff can
prove that this tassaruf was with his consent - i.e.
it was a form of Muhayyah (partition of benefit
limited as to place) in Boriy. In such a case
long possession does not affect ownership since
such possession is not adverse possession. And now,
having revoked this voluntary Muhayyah he wishes
to have the land partitioned, which he can obtain.

Precis of the case

1. Abdul Rahim Haj Ibrahim alleges that the land known as "amwad" is the joint property of the three brothers — Abdul Rahim, Abdul Rahman, and Abdul-Tatib ~~of the~~ and that it was purchased by them jointly, as appears from the land registers.
2. Abdul Rahman alleges that the land has been in his possession for the last thirty years, and that he planted trees and built a house thereon. Furthermore, he alleges that he paid all taxes and dues on the land.
3. The Abdul Rahim brought an action against his brothers in the Magistrate's Court of Tulkarem for the partition of the land.
4. ~~Defendants~~ ^{Defendants} witnesses, M. Jallad & Y. Khalil swore to the effect that the land was divided into two plots — a northern plot & a southern one; the ~~plot~~ ^{northern first} ~~first~~ ^{has been} in the possession of Defendant (Abdul Rahman), and the latter in the possession of plaintiff (Abdul Rahim) — and that the third brother, Abdul Tatib, did not possess any plot — the fact which Abdul Tatib himself admitted.
5. The Magistrate's Court found that it had no jurisdiction in possessory actions (sic) and dismissed the case.
6. A fresh case was instituted by plaintiff in the Land Court of Nablus.

- ✕
1. The Magistrate was wrong in dismissing the case, because partition and possessory actions are within the jurisdiction of the Magistrate's Court.
 2. The land is registered in the Tabu on the name of the three brothers —
 3. The Defendant alleged partition of the land which he could not prove.
 - a. No nisi land could be partitioned without the leave of the Land Registrar, which was not proved.
 - b. The land is still registered in the name of the three brothers.
 4. whereas, Defendant could not prove partition of the

Sheikh Kamal



I am of Anabta.

I know Tulkarm since last 30 yrs.

I have been permanently residing 16 1/2 years. —

So also in 1929. —

We have no lands in Tulkarm.

I know land in dispute.

I know that the land was surrounded by a wall, including the house. —

Daoud Abu Shrif

Def. was in possession since 27-28 yrs. —

I am in habit of visiting garden. —

A D's servants used to plant trees. —

never ploughed. —
did not see
planting of trees
did not see building
of wall.

Fawzi Samimi

I know land in dispute: belongs to Def.

It is in possession of Def. —

Block 11. —

Def. says "there are my witnesses" x c

Def. does not give evidence.

Def's evidence.

Sheikh Saleh:

I know land in dispute. —

Husni Haj Ibrahim.

Ans. request CTS expect to give evidence ~~will~~ ^{will}

(١) عزنا المؤمن الأجر من قصة
(٢) عزنا قصة به اوصفت السموة وبقيت هذه الامور فاعية
ولم تترك في ورقة الغصه ما يراها

Ct addressed by Pls as to burden of proof:
Def is to begin to prove prescription

مختصر الی ج ۱۰

This land is in possession of Def.

Had exclusive possession.

There were fruit trees: fig trees.

It used to be planted as a garden.

I never saw Abdel Rahim Haj Ibrahim on the land

I grafted olive trees. —

Youssef Konbadji

It has been in possession for 28 yrs & over.

used to sit with dog in garden.

Never saw Pl. in possession.

2 yrs.
Answer.

No. cultiosti m

would he exclude
him. -

Abdel Kader Bitar: garden to house of Abdel Rahman Eff. -

I don't know who built wall. -

House of Abdel Rahman used to take fruits. —

House of
P. R. helps built
partition between
Bihar & Bihar. -